



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2004

Ms. Janis Kennedy Hampton  
Assistant City Attorney  
City of Bryan  
P. O. Box 1000  
Bryan, Texas 77805

OR2004-4017

Dear Ms. Hampton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 202078.

The City of Bryan (the "city") received a request for "information concerning the shooting on Feb. 14, 2003 involving [two specified individuals] including pictures - videos." You claim that some of the requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>1</sup>

You claim that the information that the city submitted to us as Exhibit C is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.<sup>2</sup> We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089

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<sup>1</sup> We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

<sup>2</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by other statutes.

contemplates two different types of personnel files, a police officer's civil service file that the civil service director is required to maintain and an internal file that a police department may maintain for its own use. *See* Local Gov't Code § 143.089(a), (g). In cases in which a police department investigates a police officer's misconduct and takes disciplinary action against an officer, it is required by section 143.089(a)(2) to place all investigatory records relating to the investigation and disciplinary action, including background documents such as complaints, witness statements, and documents of like nature from individuals who were not in a supervisory capacity, in the police officer's civil service file maintained under section 143.089(a). *See Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (no pet.). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051 - .055. Such investigatory records are subject to release under chapter 552 of the Government Code. *See id.* § 143.089(f); *see also* Open Records Decision No. 562 at 6 (1990). However, information that reasonably relates to an officer's employment relationship with the police department and that is maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that Exhibit C is maintained in the city police department's internal personnel files pursuant to section 143.089(g) and that none of this information is subject to section 143.089(a). Based on your representations and our review of Exhibit C, we conclude that the information is confidential pursuant to section 143.089(g) of the Local Government Code and, thus, must be withheld pursuant to section 552.101 of the Government Code.

You also claim that the information that the city submitted to us as Exhibit B is excepted from disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) protects records pertaining to criminal investigations or prosecutions that have concluded in a final result other than conviction or a deferred adjudication. *See* Gov't Code § 552.108(a)(2). You state that Exhibit B relates to a case that did not result in a conviction or deferred adjudication. Thus, we understand the city to contend that Exhibit B pertains to a criminal case that has concluded in a final result other than conviction or deferred adjudication. Accordingly, we agree that section 552.108(a)(2) of the Government Code is applicable to Exhibit B.

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of basic information that must be made available to public, to include detailed description of offense). Thus, with the exception of basic information that must be released to the requestor, the city may withhold Exhibit B pursuant to section 552.108(a)(2) of the Government Code. We note, however, that the city

maintains the discretion to release all or part of this information that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the city must withhold Exhibit C pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. With the exception of basic information that must be released to the requestor, the city may withhold Exhibit B pursuant to section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

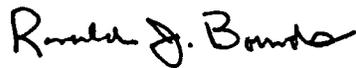
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 202078

Enc. Submitted documents

c: Mr. David Knudson  
102 Polk Avenue  
Thayer, Illinois 62689  
(w/o enclosures)