



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 21, 2004

Mr. Jerry Bruce Cain  
Assistant City Attorney  
City of Laredo  
P. O. Box 579  
Laredo, Texas 78042-0579

OR2004-8050

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209587.

The City of Laredo (the "city") received a request for (1) the personnel file of a specified police officer, (2) records relating to allegations against the officer, (3) certain police department ("department") policies, and (4) any complaints filed against the officer, including the disposition of those complaints. You state that some information will be released but claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information deemed confidential by statute. We understand that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 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 the police department may maintain for its own use. 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). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). All investigatory materials in a case resulting in disciplinary action are "from the employing department" when they are held by or in possession of the department because of its investigation into a police

officer's misconduct, and the department must forward them to the civil service commission for placement in the civil service personnel file. *Id.* Such records are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).<sup>1</sup>

You indicate that the submitted information is maintained in the department's internal file pursuant to section 143.089(g). You also state that no disciplinary action has been taken against the officer in question. Upon review, we agree that most of the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and, thus, must be withheld pursuant to section 552.101.<sup>2</sup>

However, the submitted information includes portions of the department's civil service rules and policies regarding the release of information. We assume the city maintains this information outside of the department's personnel file for this officer. The city may not engraft the confidentiality afforded to records under section 143.089(g) to other records that exist independently of the officer's personnel file. Accordingly, we conclude that the city may not withhold the submitted portions of the department's civil service rules and policies under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. As you raise no other arguments against the disclosure of this information, it must be released to the requestor.

In summary, the city must release the submitted portions of the department's civil service rules and policies. The city must withhold the remaining submitted information under section 552.101 in conjunction with section 143.089 of the Local 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

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<sup>1</sup>We note that the submitted documents include commendations, which are required to be placed in the civil service commission's personnel file under section 143.089(a) of the Local Government Code. You inform us that the civil service commission's records have been forwarded to the requestor; therefore, we assume that this information has been released.

<sup>2</sup>As we are able to make this determination, we do not address your remaining arguments against the disclosure of this information.

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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/krl

Ref: ID# 209587

Enc. Submitted documents

c: Ms. Mayra Flores  
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(w/o enclosures)