



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2004

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2004-10665

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 215221.

The City of League City (the "city"), which you represent, received a request for the background investigation conducted by the city in response to the requestor's application to be hired as a reserve police officer. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that the information at issue is subject to section 552.022 of the Government Code, which provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation made by the League City Police Department's Criminal Investigation Division. Therefore, as prescribed by section 552.022, the city must release the submitted information unless it is confidential under other law or excepted under section 552.108. You argue that

the submitted information is excepted from disclosure under section 552.111 of the Government Code. However, this exception is a discretionary exception under the Act and does not constitute "other law" for purposes of section 552.022. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 was subject to waiver). Accordingly, the city may not withhold the submitted information under section 552.111 of the Government Code. However, since section 552.101 can provide a compelling reason to withhold information, we will consider your arguments under that section.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected 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 that can be maintained by a civil service city, a civil service file for police officers that a city's civil service director is required to maintain, and an internal personnel file for police officers that a police department may maintain for its own use. *See* Local Gov't Code § 143.089(a), (g).

Information that reasonably relates to a police officer's employment relationship with a 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. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *see also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You indicate that the submitted information is part of the League City Police Department's personnel files and therefore imply that it is confidential under section 143.089(g) of the Local Government Code. You state, however, that the requestor was seeking to be hired by the city as a reserve police officer, but that his application was denied. We note that section 143.089(a) requires the civil service director to maintain a personnel file on each "police officer." Likewise, section 143.089(g) states that a police department may maintain a personnel file on each "police officer." Both subsections refer to "police officer." Section 143.003 defines a police officer as a member of a police department or other peace officer who was appointed in substantial compliance with chapter 143 or who is entitled to civil service status under section 143.005, 143.084, or 143.103. *See* Loc. Gov't Code § 143.003(5) (defining "police officer" for purposes of section 143.089). Because the requestor was not hired by the city, and, therefore, was not appointed in substantial compliance with chapter 143, he is not entitled to the rights and privileges of Chapter 143 of the Local Government Code. We further note that section 143.083 provides that a reserve officer, who is employed as a temporary employee, is not eligible to become a full-fledged civil service employee. *See* Gov't Code § 143.083(4). Because a temporary police officer employed under section 143.083 is not a police officer as defined by section 143.003(5) and is not a full-fledged civil service employee, section 143.089(g) is not applicable to personnel information related to reserve police officers.

You also argue that the submitted information is confidential under section 552.101 in conjunction with common law privacy. Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Additionally, this office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed your arguments and the submitted information and agree that the submitted information does contain a small amount of information that is generally protected under common law privacy. We note, however, that the requestor is the individual to whom the private information pertains. Therefore, the requestor has a special right of access to the private information under section 552.023 of the Act. Information to which the requestor has a right of access under section 552.023 may not be withheld from him on privacy grounds under section 552.101. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 (1987).¹ As you make no other arguments against disclosure, the submitted information must be released to the requestor.

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

¹We note, however, that if the department receives another request for information from a different requestor, the department should again seek a decision from us before releasing this information to such a requestor. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 215221

Enc. Submitted documents

c: Mr. Jack Simmons
1410 Chippendale
Houston, Texas 77018
(w/o enclosures)