

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2005

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P. O. Box 2000
Lubbock, Texas 79457

OR2005-05812

Dear Ms. Sims:

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# 227342.

The Lubbock Police Department (the "department") received four requests for similar information. Requests #1 and #2 are for the personnel file of a named officer. Request #3 is for the personnel files of two officers, one of whom is the same officer named in requests #1 and #2. Request #4 is for the "document submitted to 140th District Judge Jim B. Darnell pertaining to" a particular criminal case, along with any papers accompanying this document. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the department's obligations under the Act with respect to request #3. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). Within fifteen days of receiving the request, the governmental body must submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples,

labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You inform us that the department received the request #3 on April 15, 2005. However, you did not request a ruling from this office until May 6, 2005. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Additionally, you have not submitted to this office copies or representative samples of the specific information that was requested regarding one of the two named officers, nor have you submitted written comments stating the reasons why each exception that you raised would allow the information to be withheld. Consequently, we find that the department failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists for withholding the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.101 can provide a compelling reason to withhold information, we will address your arguments regarding this section for the named officer in request #3 for whom we received the requested information. However, since you have not submitted to this office for our review the requested information for the other officer named in request #3, we have no basis for finding any of the exceptions you claim applicable. Thus, we have no choice but to order the information released in accordance with section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

Turning to your arguments, section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code §552.101. This exception encompasses information protected by other statutes. 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, 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).¹ *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 police department because of its investigation into a police officer's misconduct, and the police 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).²

With regard to request #1 and #2 and the portion of request #3 that deals with the same officer named in requests #1 and #2, you inform us that the submitted information is being used to investigate the officer's role in an incident and that, because this investigation has not concluded, no disciplinary action has been taken against the officer. You also represent that the submitted information is contained in the officer's departmental personnel file. Based on your representations and our review of the submitted information, we conclude that the city must withhold the submitted information under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code.

Turning to request #4, you claim that the documents subject to the judicial order are also subject to the confidentiality provisions of section 143.089(g) of the Local Government Code. You indicate that the documents were disclosed to opposing parties in a lawsuit only to the extent required to comply with the judicial order, and are maintained pursuant to section 143.089(g) of the Local Government Code for the officer at issue. We note the order requires the documents to be produced “for the Court's examination and release to the parties involved in this cause[.]” As such, we find that the confidentiality provisions of section 143.089(g) of the Local Government Code continue to apply to the submitted information for purposes of this request. Therefore, we conclude that the city must withhold the submitted information under section 143.089(g) of the Local Government Code in conjunction with section 552.101 of the Government Code.

In summary, with regard to request #1, #2, #4, and the portion of request #3 that deals with the same officer named in requests #1 and #2, the city must withhold the submitted information under section 143.089(g) of the Local Government Code in conjunction with

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. Local Gov't Code § 143.051-.055.

²We note that section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee. Accordingly, the city must forward a copy of the request to the civil service director for his or her response.

section 552.101 of the Government Code. With regards to the other officer named in request #3, the information must be released to the requestor. As our ruling is dispositive, we need not address your remaining arguments.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

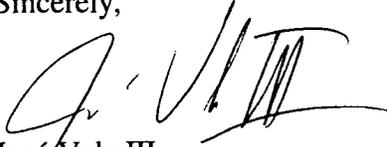
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'J. Vela III', with a stylized flourish at the end.

José Vela III
Drafting Attorney
Open Records Division

JV/krl

Ref: ID# 227342

Enc. Submitted documents

c: Todd Reno
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Filed in The District Court
of Travis County, Texas
on 12-19-05
at 1:52 p M.
Amalia Rodriguez-Mendoza Clerk

CAUSE NO. GV5-03342

CITY OF LUBBOCK, TEXAS ,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
V.	§	
	§	TRAVIS COUNTY, TEXAS
GREG ABBOTT, ATTORNEY GENERAL	§	
OF TEXAS,	§	
Defendant.	§	53 rd JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for an agreed final judgment. Plaintiff City of Lubbock, Texas and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), Tex. Gov't Code ch. 552. The parties represent to the Court that, in compliance with Tex. Gov't Code § 552.325(c), the requestor, Jennifer Vogel, was sent reasonable notice of this setting and of the parties' agreement that the City must withhold the information at issue; that the requestor was also informed of her right to intervene in the suit to contest the withholding of this information; and that the requestor has not informed the parties of her intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The Lubbock Police Department's personnel file of Terry Boyer, as requested by Ms. Vogel, is confidential by Tex. Loc. Gov't Code § 143.089(g), and thus, excepted from disclosure by

Tex. Gov't Code § 552.101.

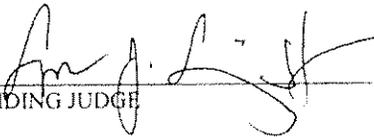
2. The City shall not release to the requestor the Lubbock Police Department's personnel file of Terry Boyer, as requested by Ms. Vogel.

3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

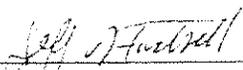
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 19th day of December, 2005.

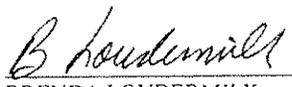


PRESIDING JUDGE

APPROVED:



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