



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 12, 2005

Mr. A.S. McHugh  
Attorney at Law  
P.O. Box 684633  
Austin, Texas 78768

OR2005-09264

Dear Mr. McHugh:

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# 234236.

The City of Cedar Park (the "city"), which you represent, received a request for seven categories of information related to the issuance by city police officers of a citation to the requestor, including the sworn oaths of office related to the officers who were present at the time the citation was issued. Additionally, the requestor seeks the names of and phone numbers for the city prosecutor and police chief. You state that the city has released most of the requested information to the requestor, but that the city does not maintain some of the requested information.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that the submitted information, which consists of five city police officers' sworn oaths of office, 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

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<sup>1</sup>We note that the Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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>2</sup>

You state that the submitted oaths of office are maintained in the police department's internal files for each officer pursuant to section 143.089(g). However, you further state that the original oath of office for each officer is also maintained by the City Secretary in her files, which, we note, is outside of the police department's personnel files for these officers. Because the request was to the city, and the city maintains the oaths in the officers' civil service commission files, the oaths are not confidential under section 143.089(g). Accordingly, we conclude that the city may not withhold the submitted oaths of office under section 552.101 in conjunction with section 143.089(g). As you raise no other arguments against the disclosure of this information, it 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

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<sup>2</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.

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).

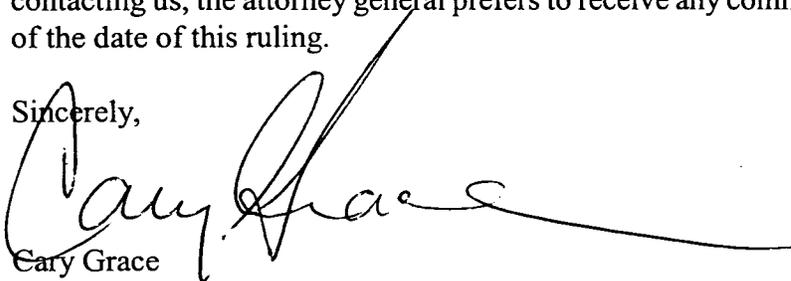
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 Office of the Attorney General 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. 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 "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/sdk

Mr. A.S. McHugh - Page 4

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Enc. Submitted documents

c: Mr. Crae Pease  
P.O. Box 255  
Lexington, Texas 78947  
(w/o enclosures)