



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2005

Mr. Brad Norton
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767-8828

OR2005-09882

Dear Mr. Norton:

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# 235414.

The City of Austin (the "city") received two requests for information related to the off-duty employment of city police department (the "department") officers at a named business establishment. 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.

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 section encompasses information deemed confidential by statute. You inform us the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code 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. Local Gov't Code § 143.089(a), (g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the

department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director [of the civil service commission] or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Local Gov't Code § 143.089(g). Subsection (g) authorizes city police departments to maintain a file on a police officer that is separate from the file maintained by the city civil service commission. *Id.* Moreover, information that reasonably relates to a police officer's employment relationship with the department and that is maintained in a department's internal personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the first set of submitted documents is maintained in the department's internal personnel files. Based on your representations and our review of the submitted information, we agree that these documents are confidential pursuant to section 143.089(g). Therefore, the department must withhold the first set of submitted documents under section 552.101 of the Government Code.

You explain that the second set of submitted documents is from a file the department maintains for the named business establishment at issue. You further state the department keeps copies of these documents in the personnel files for those officers who have off-duty employment with the named establishment. While we generally agree that the department's personnel files are confidential under section 143.089(g), the confidentiality afforded by section 143.089 may not be engrafted on other records that exist independently of an officer's department personnel file. See *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d at 564-65 (providing that only information that reasonably relates to fire fighter's or police officer's employment relationship with department is confidential under section 143.089(g)).

Accordingly, the second set of documents, which you state are maintained in the department's file for the named business establishment, are not confidential under section 143.089(g) and may not be withheld on that basis.

However, the second set of submitted documents contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the city must withhold the marked Texas driver's license number in the second set of submitted documents. The remaining information in the second set of documents must be released.

In summary, the first set of submitted documents must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The marked Texas driver's license number in the second set of submitted documents must be withheld. The remaining information in the second set of submitted documents must be released.

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 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 235414

Enc. Submitted documents

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