



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2005

Ms. Irina Visan
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OR2005-10363

Dear Ms. Visan:

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# 235503.

The Rowlett Police Department (the "department"), which you represent, received a request for the personnel and training records of two police officers and manuals of procedures for several topics.¹ You state that some of the requested information has been released to the requestor. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

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 protected by other statutes, such as

¹You state that the request only identifies one police officer by name and the department is unable to determine the identity of the other officer. Accordingly, you state that you have only submitted documents pertaining to the identified officer. We note that the Act does not require a governmental body to answer questions or perform legal research. *See* Open Records Decision No. 555 at 1-2 (1990). However, a governmental body must make a good faith effort to attempt to relate a request to information it holds. *See* Open Records Decision No. 561 at 8 (1990).

²We note that you have redacted information from the submitted documents. A governmental body that submits information to this office for the purpose of requesting an open records ruling must do so in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. As we are able in this instance to ascertain the nature of the information that you have redacted, we will determine whether it is excepted from public disclosure. In the future, however, the department should refrain from redacting any information that it submits to this office in seeking an open records ruling. *See* Gov't Code §§ 552.301(e)(1)(D), .302.

section 143.089 of the Local Government Code. The City of Rowlett 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 a city's 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).³ *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 the Act. *See id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the 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. *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. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us that the information in Exhibit C is maintained in the department's internal files concerning this officer and that these investigations did not result in disciplinary action. Based on your representations and our review of the records at issue, we agree that the

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

information in Exhibit C is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.⁴

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. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); 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); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). The department must withhold the information we have marked in Exhibit B under section 552.101 in conjunction with common-law privacy.

The requested records in Exhibit B also contain information that is excepted from disclosure under section 552.117(a)(2). Section 552.117(a)(2) excepts from required public disclosure the home address, home telephone number, social security number, and the family member information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure. *See* Open Records Decision No. 622 (1994). The department must withhold those portions of the records that reveal the officer's present and former home addresses, home telephone numbers, social security numbers, personal cell phone numbers, and family member

⁴As our ruling is dispositive, we need not address your remaining arguments against the disclosure of this information.

references. The department must withhold the information we have marked in Exhibit B under section 552.117.

The department may be required to withhold some of the submitted information under section 552.1175 of the Government Code. This section provides in part:

Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(b). The submitted documents contain information pertaining to officers who do not work for the department. If any of these individuals are currently licensed peace officers and elect to restrict access to this information in accordance with section 552.1175, the department must withhold the information we have marked under section 552.1175. Otherwise, the department must release this information.

Regardless of the applicability of section 552.1175 to the submitted information, section 552.147 of the Government Code⁵ provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Accordingly, the department must withhold the social security numbers not excepted under section 552.1175 contained in the submitted information under section 552.147.⁶

⁵Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

⁶We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Next, we note that some of the remaining information is subject to section 552.130 of the Government Code, which provides that a motor vehicle operator's, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). The department must withhold the Texas motor vehicle record information we have marked under section 552.130.

Finally, we address your arguments for Exhibit E. You claim that the information in Exhibit E is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(b)(1) excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution. . . if: (1) release of the internal record or notation would interfere with law enforcement or prosecution." A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to the information. *See* Gov't Code § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded that this provision protects certain kinds of information, the disclosure of which might compromise the security or operations of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (detailed guidelines regarding police department's use of force policy), 508 (1988) (information relating to future transfers of prisoners), 413 (1984) (sketch showing security measures for forthcoming execution), 211 (1978) (information relating to undercover narcotics investigations), 143 (1977) (log revealing use of electronic eavesdropping equipment).

You argue that the release of this information "would significantly interfere with law enforcement by helping potential criminals in avoiding detection by police officers." You also state that releasing this information would interfere with law enforcement because it would give persons "a definite insight into the patrol strategy devised by the [d]epartment." Upon review of the submitted records and your arguments, we agree that some of the submitted information consists of detailed police procedures the release of which would interfere with law enforcement. We have marked the information that the department may withhold pursuant to section 552.108(b)(1). As for the remaining information, we find that you have failed to explain how its release "would interfere with law enforcement or

prosecution.” Thus, none of the remaining information in Exhibit E may be withheld on this basis.

In summary, the information in Exhibit C is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. The department must withhold the information we have marked in Exhibit B under section 552.101 in conjunction with common-law privacy. The department must withhold the information we have marked in Exhibit B under section 552.117. The information that relates to employees of another governmental entity must be withheld under section 552.1175 if these individuals are peace officers that elect to restrict access to this information under section 552.1175(b). Regardless, the social security numbers must be withheld under section 552.147. The department must withhold the Texas motor vehicle record information we have marked under section 552.130. We have marked the information in Exhibit E that the department may withhold pursuant to section 552.108(b)(1). The remaining 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 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

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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,



James Forrest
Assistant Attorney General
Open Records Division

JF/jpa

Ref: ID# 235503

Enc. Submitted documents

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(w/o enclosures)