



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 19, 2005

Ms. Julia Gannaway  
Lynn Pham & Ross, L.L.P.  
University Centre II  
1320 S. University Drive, Suite 720  
Fort Worth, Texas 76107

OR2005-11373

Dear Ms. Gannaway:

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# 238462.

The Cedar Park Police Department (the "department"), which you represent, received a request for the following information pertaining to a specified police officer: 1) a copy of documents from the officer's personnel file, to include all disciplinary actions, and reprimands given to him; 2) a copy of the officer's internal affairs file, including all internal affairs investigations, if kept separately from the personnel file; and 3) a copy of the officer's initial interview, oral review board, initial employment application, and background investigative documents completed prior to hiring the officer. You inform us that you will release some of the requested information to the requestor. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 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 section 143.089 of the Local Government Code. We understand the City of Cedar Park 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).<sup>2</sup> *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, 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).

Based on your representation that the department maintains the information in its internal departmental files and our review of the documents at issue, we agree that the information in Exhibits B and 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.<sup>3</sup>

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<sup>2</sup>Chapter 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.

<sup>3</sup>Under section 143.089(g), the department is required to refer the requestor to the civil service commission director.

Although the department asserts section 552.1175, the proper exception is section 552.117 because section 552.117 applies to information the department maintains as the employer of this former officer. Section 552.117(a)(2) excepts from public disclosure the current and former home addresses, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175.<sup>4</sup> In this case, the named individual at issue is no longer employed by the department. If the named individual at issue remains a licensed peace officer as defined by article 2.12 of the Code of Criminal Procedure, the department must withhold the information we have marked in Exhibit D pursuant to section 552.117(a)(2).

If the individual at issue is no longer a peace officer, his personal information may be excepted under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The department may only withhold information under section 552.117(a)(1) if the former peace officer made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the former peace officer timely elected to keep his personal information confidential, the department must withhold the marked personal information regardless of whether he is still a peace officer. The department may not withhold this information under section 552.117(a)(1) if the former peace officer did not make a timely election to keep the information confidential.

Even if the social security number is not excepted under section 552.117, it is confidential under section 552.147. Section 552.147 of the Government Code<sup>5</sup> provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The department must withhold the social security number we have marked under section 552.147.<sup>6</sup>

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<sup>4</sup> “Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

<sup>5</sup> Added 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).

<sup>6</sup> We 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.

We note that Exhibit D contains motor vehicle information. 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. The department must withhold the motor vehicle information we have marked in Exhibit D under section 552.130.

In summary, Exhibits B and C are 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 D under section 552.117(a)(2) if the individual at issue remains a licensed peace officer. Alternatively, if the individual at issue is no longer a licensed peace officer, the information may be excepted from disclosure under section 552.117(a)(1) if the former officer timely requested the confidentiality of this information. We have marked the information in Exhibit D that must be withheld under sections 552.130 and 552.147. 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).

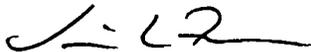
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/krl

Ref: ID# 238462

Enc. Submitted documents

c: Mr. Brian J. Guerra  
The Coffey Firm  
4700 Airport Freeway  
Fort Worth, TX 76117  
(w/o enclosures)