



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

June 6, 2006

Mr. Mark G. Mann  
Assistant City Attorney  
City of Garland  
P.O. Box 469002  
Garland, Texas 75046-9002

OR2006-05887

Dear Mr. Mann:

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# 250878.

The Garland Police Department (the "department") received a request for all records associated with a specified arrest, including in dash camera videos and all records pertaining to internal affairs investigations. You state that you have released some of the requested information. You also state that you are relying on Open Records Letter No. 2005-07855 (2005) to withhold some of the requested information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions 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 exception encompasses information that another statute makes confidential. You claim that some of the submitted information is excepted from disclosure

under section 143.089(g) of the Local Government Code. You state that Garland is a civil service city. 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 a police department may maintain for its own use. See 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>1</sup> See *Abbott v. Corpus Christi*, 109 S.W.3d 113, 122 (no pet.). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051 - .055. Such investigatory records are subject to release under the Act. See *id.* § 143.089(f); see also Open Records Decision No. 562 at 6 (1990). However, information that reasonably relates to an 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. See *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.— Austin 1993, writ denied).

You state that the information at issue is held in departmental files maintained under section 143.089(g) of the Local Government Code. Based on your representation and our review of the information at issue, we conclude that the department must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code as information made confidential by law.

You state that the remaining submitted information is held in the officers' civil service files. You claim this information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining information relates to a pending criminal case. Based upon this representation, we conclude that release of the information would interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.— Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, the department may withhold this information under section 552.108(a)(1).

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<sup>1</sup>You inform this office that a copy of this request for information is being forwarded to the Garland Firefighters and Police Officers Civil Service Commission.

In summary, the department must withhold the information it has marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Government Code. The department may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

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(c). 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).

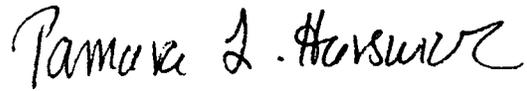
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 that reads "Tamara L. Harswick". The signature is written in a cursive style with a large, stylized initial 'T'.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/eb

Ref: ID# 250878

Enc. Submitted documents

c: Mr. Paul Adrian  
Fox 4 TV  
400 North Griffin Street  
Dallas, Texas 75202  
(w/o enclosures)