



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2006

Ms. Cary Grace  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828

OR2006-06678

Dear Ms. Grace:

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# 252159.

The Austin Police Department (the "department") received two requests from the same requestor for thirteen categories of information relating to the Austin Joint Terrorism Task Force ("JTTF"), the FBI, the Family Violence Protection Team, the department, and several specific police reports. You state that the department will release a portion of the responsive information to the requestor. You also state that you have no information responsive to four categories of the request. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). You claim that the submitted 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. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that persons may submit comments stating why information should or should not be released).

Initially, you inform us that the department asked the requestor for clarification for the first category of information of the first request. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. See Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999).

You state that the department has not received a response to its request for clarification. Accordingly, we find that the department has no obligation at this time to release any information that may be responsive to that portion of the request for information. Please note, however, that if the department receives a response to its request for clarification and wishes to withhold any information to which the requestor seeks access, the department must request another decision from this office. *See* Gov't Code §§ 552.301, 552.302.

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 made confidential by other statutes. You assert that Exhibit A is confidential under sections 418.176 and 418.177 of the Texas Homeland Security Act (the "HSA"). Section 418.176 provides in relevant part:

(a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

Section 418.177 provides:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Gov't Code §§ 418.176, .177. The fact that information may relate to a governmental body's security concerns does not make the information per se confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the

confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A).

You inform us that Exhibit A "establish[es] and delineate[s] the mission and structure of the Austin JTTF." You state that the release of Exhibit A "would allow would-be terrorists to conduct . . . [an] assessment" which "could effect countermeasures when planning a terrorist operation." Upon review, we find that you have demonstrated that the portion of Exhibit A that we have marked is confidential under section 418.177 of the HSA and therefore must be withheld under section 552.101 of the Government Code. However, we find that you failed to demonstrate how section 418.177 applies to the remaining information in Exhibit A and none of it may be withheld on that basis. *See* Open Records Decision Nos. 542 (1990) (stating that governmental body has burden of establishing that exception applies to requested information), 532 (1989), 515 (1988), 252 (1980). Therefore we will address your section 552.108(b)(1) argument for the remaining information in Exhibit A.

Section 552.108(b)(1) of the Government Code excepts from required public 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 . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]" Gov't Code § 552.108(b)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this section is applicable to the information that the governmental body seeks to withhold. *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). This office has concluded that section 552.108(b)(1) 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).

Upon review, we find that you have failed to demonstrate that releasing the remaining information in Exhibit A would interfere with law enforcement. Accordingly, this information may not be withheld under section 552.108(b)(1) of the Government Code. As you raise no further exceptions against the disclosure of the information in Exhibit A, the remaining information in Exhibit A must be released.

You claim that Exhibit B is confidential under section 552.101 in conjunction with section 143.089 of the Local Government Code.<sup>1</sup> Section 143.089 provides for the existence

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<sup>1</sup> You state that the City of Austin is a civil service municipality under chapter 143 of the Local Government Code.

of two different types of personnel files relating to a police officer, including one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. See Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055.

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). See *Abbott v. 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 are in the 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 may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. See Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. See Local Gov't Code § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

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 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.

*Id.* § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the

departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made those records confidential. See *City of San Antonio*, 851 S.W.2d at 949 (concluding that “the legislature intended to deem confidential the information maintained by the . . . police department for its own use under subsection (g)”). The court stated that the provisions of section 143.089 governing the content of the civil service file reflect “a legislative policy against disclosure of unsubstantiated claims of misconduct made against police officers and fire fighters, except with an individual’s written consent.” *Id.*; see also *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (restricting confidentiality under section 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files).

You inform us that the information in Exhibit B is contained in departmental files, which you indicate are maintained under section 143.089(g). Based on your representations and our review of the information at issue, we conclude that Exhibit B must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

In summary, the information we have marked in Exhibit A must be withheld from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. Exhibit B must be withheld from disclosure pursuant to section 552.101 in conjunction with section 143.089(g) of the Local Government Code. The remaining information 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

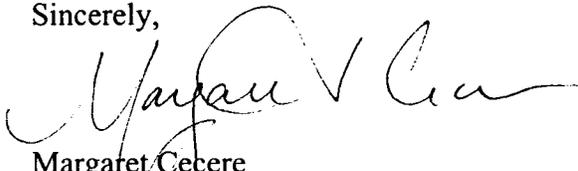
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Margaret Cecere  
Assistant Attorney General  
Open Records Division

MC/eb

Ref: ID# 252159

Enc. Submitted documents

c: Ms. Barbara Terrell  
P.O. Box 49175  
Austin, Texas 78765  
(w/o enclosures)