



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, 2007

Ms. Julia Gannaway
Lynn, Pahm & Ross, L.L.P.
1320 South University Drive, Suite 720
Fort Worth, Texas 76107

OR2007-03813

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# 275048.

The City of Waxahachie (the "city") received a request for specific e-mails "sent via the [city's] police department computer/e-mail system." You claim that the information may be subject to a previous ruling. We have considered your arguments and reviewed the submitted information.

You state that the requested information is the subject of a previous ruling issued by the office. On December 15, 2006, this office issued Open Records Letter No. 2006-14805 (2006), in which we ruled that the city must withhold submitted documents under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. However, you state that the circumstances have changed since the issuance of that prior ruling, as the officer in question has now received formal discipline relating to the e-mails. We presume the discipline is one of the prescribed disciplinary actions under chapter 143. See Local Gov't Code §§ 143.051-.055. Section 143.089(a)(2) requires that the city's police department place all investigatory records relating to the investigation and disciplinary action 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 in possession of the police department because of its investigation into a police officer's misconduct, and the police 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 id.* § 143.089(f); Open Records Decision No. 562 at 6 (1990). Accordingly, as the submitted information appears to be investigatory material that must be placed in the police officer's civil service file pursuant to section 143.089(a), and you do not raise any exceptions against disclosure, the submitted 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/jb

Ref: ID# 275048

Enc. Submitted documents

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