



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2007

Mr. Albert López
City of Laredo
14310 Northbrook Drive, Suite 110
San Antonio, Texas 78232

OR2007-09190

Dear Mr. López:

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# 284324.

The Laredo Police Department (the "department"), which you represent, received three requests for information pertaining to a specific incident. You state that the department has released some of the responsive information. 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.

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 statute, such as section 143.089 of the Local Government Code. You state that the City of Laredo 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 the 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). *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.* Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. 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). However, a document relating to an 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 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. *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. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the department maintains the submitted information in the department's internal files pursuant to section 143.089(g). You state this information relates to an ongoing internal investigation which has not resulted in disciplinary action. We note, however, that the submitted information includes law enforcement records which are also maintained separate and apart from the internal affairs investigation. The present request does not specifically seek information from the officers' department personnel files. Instead, the request seeks information pertaining to a specified incident. Because the requestor asks for information about the incident in general, both the officers' personnel files and any copies of the investigatory materials that the department maintains for law enforcement purposes are responsive. The department may not engraft the confidentiality afforded to records under section 143.089(g) to records that exist independently of the internal files. Accordingly, the information that is maintained solely in the department's internal files is excepted from disclosure under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. However, that information which is maintained for other law enforcement related purposes is not confidential under section 143.089(g) of the Local Government Code and may not be withheld from disclosure on this basis.

We now address your arguments regarding section 552.108 of the Government Code for the remainder of the submitted information that is not confidential under section 143.089(g) of the Local Government Code. Section 552.108 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." Gov't Code § 552.108(a)(1). 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 submitted information relates to a pending criminal investigation and prosecution. Based upon this representation, we conclude that the release of the remaining submitted 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). Accordingly, we conclude that section 552.108 of the Government Code is applicable to the remaining submitted information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Thus, with the exception of the basic front page offense and arrest information, the department may withhold the remaining submitted information from disclosure based on section 552.108(a)(1). We note that the department has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the information maintained solely in the department's internal files must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. With the exception of basic information, the department may withhold the remaining submitted information under section 552.108 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(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).

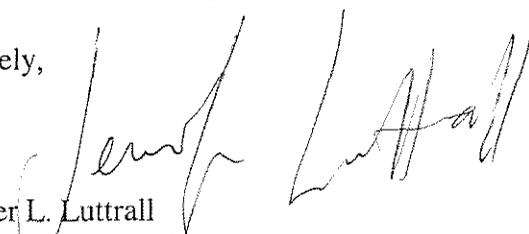
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Jennifer L. Luttrall
Assistant Attorney General
Open Records Division

JLU/eeg

Ref: ID# 284324

Enc. Submitted documents

c: Ms. Kirsten Crow
Laredo Morning Times
111 Esperanza Drive
Laredo, Texas 78041
(w/o enclosures)

Mr. Raymond Gomez
News Director
KGNS-TV
120 West Del Mar Boulevard
Laredo, Texas 78045
(w/o enclosures)

Mr. Joey Horta
KGNS-TV
120 West Del Mar Boulevard
Laredo, Texas 78045
(w/o enclosures)