



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2007

Mr. Stephen R. Alcorn  
Assistant City Attorney  
City of Grand Prairie  
P.O. Box 534045  
Grand Prairie, Texas 75053-4045

OR2007-09475

Dear Mr. Alcorn:

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# 284826.

The City of Grand Prairie (the "city") received a request for any and all records related to a named police officer. You state that you have released a portion of the requested information which is maintained by the city's director of civil service. *See* Local Gov't Code § 143.089(a). You also state that you have released some of the requested information that is subject to section 552.022 of the Government Code. *See* Gov't Code §§ 552.022(a) (making certain information held by a governmental body expressly public and not excepted from disclosure unless confidential under other law). You further inform us that, due to city policy, certain investigative information pertaining to the named officer has been purged, and thus no longer exists in the files of the named officer.<sup>1</sup>

You state, and provide a copy of the released information showing, that you have redacted the named officer's personal information under section 552.117(a)(2) of the Government Code. This office has issued a previous determination allowing all governmental bodies to redact certain personal information of peace officers under section 552.117(a)(2) of the Government Code. *See* Open Records Decision No. 670 (2001) (previous determination that governmental body may withhold home address, home telephone number, personal cellular

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<sup>1</sup>We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

phone number, personal pager number, social security number and information that reveals whether individual has family members, of any individual who meets definition of “peace officer” set forth in article 2.12 of Texas Code of Criminal Procedure without necessity of requesting attorney general decision as to whether exception under section 552.117(a)(2) applies). Upon review, however, we find that a portion of the information you have redacted may not be withheld under section 552.117(a)(2). We have marked this information. As you have raised no other exceptions to disclosure of this information, it must be released to the requestor. We have also marked additional information that the city must withhold under section 552.117(a)(2).

You claim that the submitted information marked as “confidential documents” is excepted from disclosure under sections 552.102 and 552.108 of the Government Code.<sup>2</sup> We also understand you to raise sections 552.101 and 552.103 as exceptions to disclosure. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the city’s obligations under the Act, chapter 552 of the Government Code. Pursuant to section 552.301(b), a governmental body that receives a request for information that it wishes to withhold must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov’t Code § 552.301(a), (b). Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us that the city received this request on May 3, 2007. However, you did not submit a copy of the written request for information until May 29, 2007. Consequently, we find that the city failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption

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<sup>2</sup>Although you also raise section 552.024 of the Government Code, we note that section 552.024 is not an exception to public disclosure under chapter 552 of the Government Code. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov’t Code § 552.024. Please note that section 552.117 is the proper exception to raise when arguing the confidentiality of such information.

of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Although you claim exceptions to disclosure under sections 552.103 and 552.108 of the Government Code, those sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103), Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver); *but see* Open Records Decision No. 586 at 2-3 (1991) (law enforcement interests of another governmental body could provide compelling reason for non-disclosure under statutory predecessor to Gov't Code § 552.108). The city's claims under sections 552.103 and 552.108 are not compelling reasons for non-disclosure under section 552.302. Therefore, the city has waived sections 552.103 and 552.108 in failing to comply with section 552.301 and may not withhold any of the submitted information under section 552.103 or section 552.108. However, because sections 552.101 and 552.102 of the Government Code can provide compelling reasons to withhold information, we will address your arguments under these exceptions.

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 protected by other statutes, such as section 143.089(g) of the Local Government Code. The City of Grand Prairie 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). 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)-(3).

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 §§ 143.051-143.055. 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, information that reasonably relates to an officer's employment relationship with the department and that is maintained in the 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 submitted information marked as “confidential documents” is maintained in the department's internal file regarding this officer.<sup>3</sup> We note that included in this information is a completed police performance review. This information is subject to section 143.089(a)(3). Consequently, if you have not done so already, this information must also be placed in the officer's civil service file. However, we agree that the information maintained in the department's internal file is confidential under section 143.089(g) of the *Local Government Code* and, therefore, the information you have marked as “confidential documents” must be withheld from disclosure under section 552.101 of the *Government Code*.<sup>4</sup>

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

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<sup>3</sup>We note that section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against the disclosure.

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 "Jordan Johnson". The signature is written in a cursive style with a large, looped initial "J".

Jordan Johnson  
Assistant Attorney General  
Open Records Division

JJ/jb

Ref: ID# 284826

Enc. Submitted documents

c: Mr. Christopher Lewis  
3400 Carlisle #300  
Dallas, Texas 75204  
(w/o enclosures)