



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 5, 2007

Mr. Monte Akers
Akers & Boulware-Wells, LLP
816 Congress Avenue, Suite 1725
Austin, Texas 78701

OR2007-13010

Dear Mr. Akers:

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# 292781.

The Balch Springs Police Department (the "department"), which you represent, received two requests from a member of the city council for (1) an internal affairs investigation of a named officer and (2) specified categories of information pertaining to "new hires" under the police chief. You indicate that the requested information may be excepted from disclosure under sections 552.101, 552.108, 552.1175, and 552.122 of the Government Code. We have considered your arguments and reviewed the submitted information.

The purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body does not act as a member of the public in doing so. Thus, exceptions to public disclosure under the Act do not control the right of access of an official of a governmental body to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district); *see also* Gov't Code §§ 552.201 (chief administrative officer of governmental body is officer for public information for governmental body), 552.204 (officer for public information is responsible for release of public information as required by Act).

The requestor is a member of the city council and you state that she is requesting the information at issue "in her official capacity." However, you also contrarily indicate that Resolution No. 365 limits the ability of a city council member to acquire information in an *individual* capacity. Resolution No. 365 provides that "No council member acting individually . . . may . . . require employees, other than Council appointees, to provide information, copies of documents or calculations, not available to other citizens." This resolution also provides that "Council members, acting individually, may not require any employee . . . to provide copies of documents, calculations or other information, other than information available to all citizens, except that related to matters coming before the governing body as a *whole*["]." (emphasis added).

We are unable to determine from your arguments whether, in asking for the information at issue, the requestor is acting individually and not on behalf of the council as a whole, such that she has no greater right to the information than other citizens, or whether, when you state she is asking in her "official capacity," you mean she is in compliance with the resolution and is asking on behalf of the council as a whole. Therefore, we must rule conditionally. If you determine that the requestor is acting in compliance with Resolution No. 365 on behalf of the council as a whole, then she has an inherent right of access to the information and it must be provided to her. The release of the submitted information in this situation does not constitute a release to the general public and, as such, the department waives none of the possible exceptions to the disclosure of this information. *See* Tex. Att'y Gen. Op. No. JC-0283 (2000) at 3-4 ("Information made confidential by subsection 143.089(g) of the Texas Local Government Code may be released to the city manager and the city attorney with the consent of the governing body of the municipality."); Open Records Decision No. 666 at 4 (2000) (municipality's disclosure to a municipally-appointed citizen advisory board does not constitute a release to the public as contemplated under section 552.007 of the Government Code). We note that, because the release of this information to a member of the city council is not a release to the public, the requestor must be cautious in maintaining the documents in the same manner as they are maintained by the department. *See generally* Gov't Code § 552.352 (criminal penalties imposed for release of confidential information). If, however, you determine the requestor is making her request individually, then we understand the resolution to give the requestor no greater access to this information than that afforded to the general public. In that event, we will consider your arguments for exception of the information under the Act.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. You indicate that the city 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).¹ *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.* Such records are subject to release under the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information 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. Texas Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You inform us that the submitted information is maintained in the police department's internal files concerning the named officer. Thus, if the requestor is making her request individually, then we agree that the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.²

To conclude, if the requestor made her request in compliance with Resolution No. 365 on behalf of the city council as a whole, then the department must release the information to her. If the requestor made her request individually, then the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 143.089 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

¹Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055.

²We 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.

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).

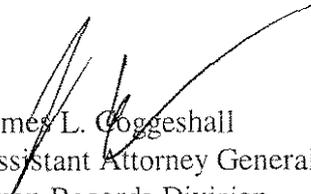
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jh

Ref: ID# 292781

Enc. Submitted documents

c: Ms. Karen E. Gray
c/o Monte Akers
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