



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2007

Ms. Judith Sachitano Rawls
Assistant City Attorney
Beaumont Police Department
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2007-13818

Dear Ms. Rawls:

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# 292521.

The Beaumont Police Department (the "department") received a request for all closed internal affairs investigations involving six former department officers.¹ You state that the department is making some information available to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117,² 552.119, and 552.130 of the Government Code. The department also states that it has notified a third party because the release of the submitted videotape may implicate its privacy and security interests. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information, some of which you inform this office is a representative sample.³

¹The department informs this office that it does not currently employ any of the named officers.

²Although you raise section 552.1175, the proper exception to assert is section 552.117 because section 552.117 applies to information the department maintains as the former employer of the officers.

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses information that is made confidential by statute. *Id.* § 552.101. Section 143.089 of the Local Government Code contemplates two different types of personnel files, a police officer’s civil service file that a city’s 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). We understand that the City of Beaumont is a civil service city under chapter 143 of the Local Government Code.

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).⁴ *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 chapter 552 of the Government Code. *See* Local Gov’t Code § 143.089(f); Open Records Decision No. 562 at 6 (1990).

However, a document relating to a police 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. *Id.* § 143.089(b). Information that reasonably relates to a police 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. Tex. Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

Based on your arguments and our review of the submitted information, we understand you to represent that Exhibits B, C, D, E, G, H, and 2 are departmental internal affairs files maintained pursuant to section 143.089(g). You state that Exhibits B and C, as well as some of the documents in Exhibit E, relate to internal affairs investigations that did not result in disciplinary action. The remaining exhibits and information relate to charges of misconduct that resulted in suspensions of the officers at issue. The remaining exhibits and information

⁴Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov’t Code §§ 143.051-.055. A letter of reprimand does not constitute discipline under chapter 143.

are subject to section 143.089(a).⁵ *See* Local Gov't Code § 143.089(a)(2). You state that the responsive suspension documents have been placed in the civil service files. We note that *all* information pertaining to an investigation that resulted in disciplinary action must be placed in the civil service commission's personnel file pursuant to section 143.089(a) and must be released unless the commission asserts an exception under the Act to withhold the information.⁶ However, because the department received the request and it maintains the submitted information in its departmental personnel files, we agree that the submitted information is confidential under section 143.089(g) of the Local Government Code and must be withheld from disclosure under section 552.101 of the Government Code. Because our determination on this issue is dispositive, we need not address your remaining arguments against disclosure.

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,

⁵We 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. You state that the requestor will be directed to the Civil Service Director for the City of Beaumont.

⁶The department asserts that this office should apply the case of *Abbott v. City of Corpus Christi*, 109 S.W.3d 113 (Tex. App.—Austin 2003, no pet.), prospectively. We disagree with your assertion because this office has always applied this interpretation of section 143.089(a) and *City of Corpus Christi* affirmed our interpretation. *See* 109 S.W.3d at 119, 120. Therefore, *City of Corpus Christi* does not apply prospectively only.

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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 292521

Enc. Submitted documents

c: Mr. Jerry Jordan
The Examiner Newspaper
795 Willow
Beaumont, Texas 77701
(w/o enclosures)