



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 4, 2008

Mr. Denis C. McElroy  
Assistant City Attorney  
The City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR2008-02928

Dear Mr. McElroy:

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# 303679.

The City of Fort Worth (the "city") received a request for the complete copy of the personnel file of a named individual. You state that the city is releasing most of the requested information. You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also inform this office that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note that some of the requested information is the subject of a previous request for information to which this office issued Open Records Letter No. 2008-02908 (2008). Although you seek to rely on Open Records Letter No. 2008-02908 as a previous determination, we note that the governmental body involved in that ruling was the Fort Worth Police Department. Because the instant request for information was received by a different governmental body, Open Records Letter No. 2008-02908 cannot be relied on as a previous determination. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body,

and ruling concludes that information is or is not excepted from disclosure). However, we will address your arguments for this and the other requested 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." Section 552.101 encompasses section 143.089 of the Local Government Code. 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 a police 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 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. Local Gov't Code § 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 Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that portions of the submitted information pertain to investigations of alleged misconduct that did not result in any discipline against the named officer. Based upon your arguments and our review of the submitted information, we understand you to represent that a portion of the submitted information, which we have marked, is maintained in the named police officer's departmental personnel file. Therefore, this information is confidential under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. We note, however, that the remaining submitted information consists solely of periodic evaluations of the named officer. You inform us that the majority of the information in the evaluations will be released to the requestor. Thus, we understand that the evaluations are from the officer's civil service file maintained under section 143.089(a). Nevertheless, you

contend that the highlighted portions of the evaluations are confidential under section 143.089(g) because it references records maintained in the officer's internal department section 143.089(g) file. We disagree. Periodic evaluations of officers are properly maintained in the section 143.089(a) civil service file. Local Gov't Code § 143.089(a)(3) (stating that an officer's civil service file must contain any letter, memorandum, or document related to the periodic evaluation of the officer by a supervisor). Further, the fact that the evaluations at issue reference information that is contained in the officer's confidential section 143.089(g) file does not make the evaluations or any portion of their contents confidential. *See* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express, and a confidentiality requirement will not be implied from the statutory structure), 478 at 2 (1987) (stating that as a general rule, statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Accordingly, no portion of the remaining submitted evaluations is confidential under section 143.089(g). Thus, the city must withhold the information we have marked under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. However, the city must release the submitted evaluations in their entirety.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if 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 an exception under section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the Fort Worth Police Department conducted administrative and criminal investigations in response to an allegation that one of its officers violated department rules and provisions of the penal code. You further state that the officer was subsequently arrested and his case is before the grand jury. You explain that the administrative and criminal investigations arise from the same incident and will undoubtedly involve the same witnesses and evidence. Finally, you state that a representative from the Tarrant County District Attorney's Office has asked that the administrative documents be withheld so as not to interfere with the ongoing criminal prosecution. Based upon these representations, we find that the release of the remaining requested 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); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, Gov't Code § 552.108 may be invoked by any proper custodian of information which relates to incident). *But see Morales v. Ellen*, 840 S.W.2d 519 (Tex. Civ. App.—El Paso 1992, writ denied) (Gov't Code § 552.108 not applicable where no criminal investigation or prosecution of police officer

resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of Gov't Code § 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer).

Section 552.108, however, is inapplicable to 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*. See also Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information which must be released, the city may withhold the remaining requested information under section 552.108(a)(1) of the Government Code.

In summary: (1) the information that we have marked 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) the submitted evaluations must be released in their entirety; and (3) with the exception of basic information, the city may withhold the remaining requested information under section 552.108(a)(1) 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Jessica J. Maloney  
Assistant Attorney General  
Open Records Division



JJM/jh

Ref: ID# 303679

Enc. Submitted documents

c: Mr. Richard W. Carter  
Senior Attorney  
Combined Law Enforcement Associations of Texas  
904 Collier  
Fort Worth, Texas 76102  
(w/o enclosures)