



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 10, 2008

Ms. Cathie Childs  
Assistant City Attorney  
City of Austin Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR2008-03193

Dear Ms. Childs:

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# 304273.

The Austin Police Department (the "department") received a request for all use of force forms completed by a named officer, the entire personnel file of a named officer, all audio and video tapes regarding a specified incident, all offense reports or other documents regarding a specified incident, the audio tape of the 911 call made by a named individual, all documents concerning the investigation of a specified incident by a named officer, all complaints filed against a named officer and the results of those complaints, and all audio tape interviews of a named individual. You state that you are releasing some responsive information in the city's civil service file to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This encompasses section 143.089 of the Local Government Code. Section 143.089 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). You state that the City of Austin 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).<sup>1</sup> *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, information maintained in a police department's personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that the submitted information is maintained in the department's personnel files concerning this officer and pertains to investigations of alleged misconduct that did not result in any discipline against the named officer. We agree that most of this information is confidential pursuant to section 143.089(g) of the Local Government Code and, thus, must be withheld pursuant to section 552.101. However, we note that some of submitted records, such as the incident report and the in-car video, are general law-enforcement records that are also maintained separate and apart from those of the internal affairs investigation found in the officer's personnel file. The department may not engraft the confidentiality afforded to records under section 143.089(g) to other records that exist independently of a police officer's departmental file. Accordingly, the incident report and in-car video are not confidential under section 143.089 of the Local Government Code, and may not be withheld on this basis. The remaining information solely maintained in the department's personnel file must be withheld under section 552.101 in conjunction with section 143.089.

Section 552.130 of the Government Code excepts from disclosure information that “relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state.”<sup>2</sup> Gov't Code § 552.130. We note that section 552.130 does not encompass motor vehicle record information of other states. Accordingly, the department must withhold the information we

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<sup>1</sup>Chapter 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.

<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

have marked under section 552.130 of the Government Code. Furthermore, the department must withhold the Texas motor vehicle record information in the submitted in-car video recording under section 552.130. However, if the department lacks the technical capability to redact this information from the video recording at issue, it must withhold the in-car video recording in its entirety. *See* Open Records Decision No. 364 (1983).

In summary, the information solely maintained in the department's personnel file must be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. The motor vehicle record information in the in-car video and the information we have marked must be withheld under section 552.130. The remaining submitted information must be released.<sup>3</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 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

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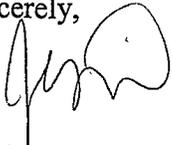
<sup>3</sup>We note that the submitted information contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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# 304273

Enc. Submitted documents

c: Mr. Malcolm Greenstein  
Greenstein & Kolker  
1006 East Cesar Chavez Street  
Austin, Texas 78702  
(w/o enclosures)