



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 27, 2008

Mr. Kyle Thomas
Assistant City Attorney
City of Abilene
P. O. Box 60
Abilene, Texas 79604

OR2008-04019

Dear Mr. Thomas:

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# 305796.

The Abilene Police Department (the "department") received four requests from two different requestors for information pertaining to a specified incident. You claim that the submitted police report and accompanying information are excepted from disclosure under sections 552.101, 552.108, 552.130, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted 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." 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). We understand that the City of Abilene 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

¹While you cite section 552.147 of the Government Code for your argument to withhold Texas-issued license plate numbers, we understand you to raise section 552.130 of the Government Code, as section 552.130 is the proper exception for the substance of your argument.

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.* 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 indicate that the submitted police report and accompanying information, which you have labeled “Exhibit B,” are maintained in both the department's internal personnel file concerning the officer at issue, as well as the department's criminal investigations files, as the department and the internal affairs division are conducting concurrent criminal and internal affairs investigations into the incident at issue. In this instance, one of the two requestors asks for the criminal investigation records, while the second requestor asks for the internal affairs investigation records. We agree that the department's records of an internal affairs investigation that does not result in disciplinary action are confidential under section 143.089(g). Accordingly, the department must withhold Exhibit B from the requestor who asks for internal affairs investigation records.² However, the criminal investigation records contained within Exhibit B are maintained by the department separately and apart from those of the internal affairs investigation. The department may not engraft the confidentiality afforded to records under section 143.089(g) to other records that exist independently of the internal affairs investigation. Thus, the department may not withhold Exhibit B under section 552.101 in conjunction with section 143.089(g) from the requestor who asks for criminal investigation records. We will therefore consider your remaining arguments regarding this request.

Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) 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 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex.1977). You state that Exhibit B relates to a pending criminal investigation being conducted by the department. Based upon this

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

representation and our review of the information at issue, we conclude that section 552.108(a)(1) is applicable to this information. *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).

However, section 552.108 does not except from disclosure 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* 531 S.W.2d at 186-87. Thus, with the exception of basic information, the department may withhold Exhibit B under section 552.108(a)(1). As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

In summary, the department must withhold Exhibit B from the requestor who asks for internal affairs records under section 552.101 in conjunction with section 143.089(g) of the Local Government Code. Except for basic information, the department may withhold Exhibit B from the second requestor 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 305796

Enc. Submitted documents

c: Mr. Kyle Peveto
Abilene Reporter-News
101 Cypress Street
Abilene, Texas 79601
(w/o enclosures)

Mr. Cam Tran
KTXS 12 TV
P. O. Box 2997
Abilene, Texas 79604
(w/o enclosures)