



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2008

Mr. Richard L. Bilbie  
Assistant City Attorney  
City of Harlingen  
P.O. Box 2207  
Harlingen, Texas 78551

OR2008-07650

Dear Mr. Bilbie:

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# 312003.

The City of Harlingen (the "city") received a request for a list of all suspensions, demotions, and terminations for city police department employees during the years 2006 and 2007. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the requestor only seeks information pertaining to suspensions, demotions, and terminations for the specified time periods. You have submitted information pertaining all types of dispositions including no action, written reprimands, counseling, and allegations that were not sustained or unfounded. Therefore the information that pertains to dispositions other than suspensions, demotions, and terminations is not responsive to this request for information. This decision does not address the public availability of the non-responsive information, and the department need not release that information to the requestor.

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 state that the City of Harlingen 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). *Abbott v. City of Corpus Christi*, 109 S.W.3d 113, 122 (Tex. App.—Austin 2003, no pet.). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-143.055. 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).

Because the request was sent to the city, both the 143.089(a) file maintained by the city civil service commission and the 143.089(g) file maintained by the city police department would be responsive. As noted above information pertaining to suspension, demotion, and termination of a police officer must be maintained by the civil service commission under 143.089(a) of the Local Government Code. Information maintained by the civil service commission in a file maintained pursuant to section 143.089(a) is not confidential under section 143.089. Local Gov't Code § 143.089(f). If a governmental body seeks to withhold information maintained in a 143.089(a) file, then it must submit arguments to this office explaining how that information is excepted from disclosure under the Act or confidential under other law. In this instance, we did not receive any argument explaining why the responsive disciplinary information that must be maintained by the civil service commission in the 143.089(a) file should not be released. *See* Gov't Code § 552.301(e)(1)(A). Therefore, we assume that the civil service commission has released the information pertaining to the suspension, demotion, and termination of city police officers to the requestor. If the civil service commission has not released such information, then it must do so now. Accordingly because this suspension, demotion, and termination information pertaining to the city's police officers will be released by the civil service commission, we need not address your arguments under section 143.089(g) for the disciplinary information of police officers maintained by the city's police department.

You also argue that the remaining information pertaining to the suspension, demotion, or termination of other police department employees is confidential pursuant to section 143.089 of the Local Government Code. However section 143.089 only applies to police officers and fire fighters. Based on our review, the remaining information pertains to jailers, dispatchers, and other support staff who do not appear to be licensed peace officers. Thus, you have failed to establish how section 143.089(g) is applicable to these non-police officer employees. Accordingly, you may not withhold any of the remaining information pertaining to the suspension, demotion, or termination of these employees under section 143.089(g) of the Local Government Code.

Next you assert that the remaining information is confidential under section 552.102 of the Government Code. Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976).

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. We note that this office has concluded that there is a legitimate public interest in the qualifications and performance of a public employee. See Open Records Decision Nos. 470 at 4 (1987), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). The information at issue pertains to the behavior and discipline of department employees. Therefore, we conclude that there is a legitimate public interest in this information. Accordingly, section 552.102 is not applicable to the remaining information and it may not be withheld on this basis. As you raise no other exception to disclosure of this information, it must be released to the requestor.

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,

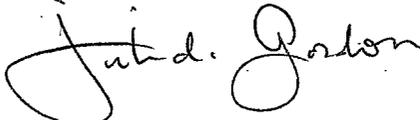
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/eeg

Ref: ID# 312003

Enc. Submitted documents

c: Mr. Brent L Holt, CLU  
215 East Rainbow Ridge CR  
The Woodlands, Texas 77381-3083  
(w/o enclosures)