



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 19, 2008

Mr. Charles Weir
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

OR2008-08420

Dear Mr. Weir:

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# 313716.

The San Antonio Police Department (the "department") received a request for 1) information referencing a specified person and any of four named department officers and 2) information referring to a named officer's recommendation to initiate a specified criminal investigation. You claim that the submitted information is excepted from disclosure under sections 552.101 and 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 was the subject of a previous request for information in response to which this office issued Open Records Letter No. 2007-01033 (2007). In that ruling, we concluded that the information subject to that request was confidential pursuant to section 143.089(g) of the Local Government Code. We therefore ruled the information must be withheld by the department pursuant to section 552.101 of the Government Code. You state that Internal Affairs Detail ("IAD") case numbers 01-07-170 and 02-09-183 are identical to the information we ruled confidential in Open Records Letter No. 2007-01033. You also state, and we have no indication otherwise, that the law, facts, and circumstances on which the prior ruling was based have not changed. Accordingly, we conclude that the department must continue to rely on our prior ruling as a previous determination and withhold IAD case numbers 01-07-170 and 02-09-183 in accordance with Open Records Letter No. 2007-01033. *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).

We will, however, consider your arguments against disclosure for 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 section encompasses information protected by other statutes, such as section 143.089 of the Local Government Code. The City of San Antonio 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.¹ *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 IAD case number 08-03-065 is maintained in the department's internal file pursuant to section 143.089(g). Based on your representations and our review, we conclude

¹You state that a copy of the request will be forwarded to the San Antonio Firefighters and Police Officers Civil Service Commission.

that IAD case number 08-03-065 is confidential pursuant to section 143.089(g) of the Local Government Code. Therefore, the department must withhold IAD case number 08-03-065 pursuant to section 552.101 of the Government Code.

Next, you assert that the submitted criminal investigation file is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted criminal investigation file pertains to an investigation that has been closed with no charges being filed. Based on your representations, and our review, we find that section 552.108(a)(2) is applicable to the submitted criminal investigation file in this instance.

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 Publishing 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). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the district attorney may withhold the submitted criminal investigation file from disclosure under section 552.108(a)(2).²

In summary, the department must continue to withhold IAD case numbers 01-07-170 and 02-09-183 in accordance with Open Records Letter No. 2007-01033. The department must withhold IAD case number 08-03-065 under section 552.101 of the Government Code in conjunction with 143.089(g) of the Local Government Code. With the exception of basic information, which must be released, the department may withhold the submitted criminal investigation file under section 552.108(a)(2) 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

²We note that you have the discretion to release all or part of the remaining information in the criminal investigation file that is not otherwise confidential by law. Gov't Code § 552.007.

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). If the governmental body does not file suit over 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 313716

Enc. Submitted documents

c: Ms. Lomi Kriel
Staff Writer
The San Antonio Express-News
301 Avenue E
San Antonio, Texas 78205
(w/o enclosures)