



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 6, 2008

Ms. Patricia E. Carls
Carls, McDonald & Dalrymple, L.L.P.
901 South MoPac Expressway Suite 500
Austin, Texas 78746

OR2008-10686

Dear Ms. Carls:

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# 318218.

The Georgetown Police Department (the "department"), which you represent, received two requests from the same requestor for information relating to a specified incident, including records of criminal and internal affairs investigations, the names of officers involved, and a dispatch log. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. You also state that some of the requested information is the subject of previous open records letter rulings. We have considered your arguments and have reviewed the information you submitted.¹

We begin with your representation that information submitted as Groups 2, 3, and 4 is the subject of previous open records letter rulings. You state that information in Groups 2 and 3 is encompassed by our rulings under sections 552.101 and 552.108 of the Government Code in Open Records Letter Nos. 2008-01777 (2008), 2008-02522 (2008), and 2008-06543 (2008). Those rulings conclude, among other things, that certain information relating to pending criminal investigations may be withheld under section 552.108(a)(1) of the Government Code and that other information must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code and common-law privacy. You also state that information in Group 4 is the subject of Open

¹This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the department to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Records Letter No. 2008-09704 (2008). That ruling concludes that information maintained in a police officer's civil service file under section 143.089(a) of the Local Government Code may be withheld under section 552.108(a)(1), except for certain information that the department was required to release in accordance with a previous ruling. To the extent that the submitted information in Groups 2, 3, and 4 is encompassed by our rulings under sections 552.101 and 552.108 in Open Records Letter Nos. 2008-01777, 2008-02522, 2008-06543, and 2008-09704, the department must dispose of any such information in accordance with the previous rulings, provided that there has been no change in the law, facts, and circumstances on which those rulings are based. See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (listing elements of first type of previous determination under Gov't Code § 552.301(a)). To the extent that the previous rulings do not encompass the information in Groups 2, 3, and 4 or their underlying law, facts, or circumstances have changed, we will consider your exceptions to disclosure of the information in question. We also will consider your exceptions to disclosure of the information in Groups 1 and 5.

We next note that some of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(1) provides for required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]" unless the information is expressly confidential under other law or excepted from disclosure under section 552.108 of the Government Code. Gov't Code § 552.022(a)(1). In this instance, the information in Groups 2, 3, and 4 includes completed reports and investigations. That information must be released pursuant to section 552.022(a)(1) unless it is expressly confidential under other law or excepted from disclosure under section 552.108. Section 552.103 of the Government Code, which you claim, is not other law that makes information expressly confidential for the purposes of section 552.022(a)(1). See *id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the completed reports and investigations in Groups 2, 3, and 4 may not be withheld under section 552.103. However, we will consider your arguments under section 552.108 for the information in Groups 1 through 5, including the information that is subject to section 552.022(a)(1). We also will consider your arguments under section 552.103 for the information in Groups 1 through 5 that is not subject to section 552.022(a)(1). Additionally, we will consider your claim under section 552.101 of the Government Code.

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code.²

²You state that the City of Georgetown is a civil service municipality under chapter 143 of the Local Government Code.

Section 143.089 provides for the existence of two different types of personnel files relating to a police officer, including one that must be maintained as part of the officer's civil service file and another that the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). The officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the police officer's supervisor, and documents relating to any misconduct in any instance in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code. *See id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See id.* § 143.051 *et seq.* 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). *See Abbott v. 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 are in the 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 may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). Information relating to alleged misconduct or disciplinary action taken must be removed from the police officer's civil service file if the police department determines that there is insufficient evidence to sustain the charge of misconduct or that the disciplinary action was taken without just cause. *See* Local Gov't Code § 143.089(b)-(c).

Subsection (g) of section 143.089 authorizes the police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. Section 143.089(g) provides as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Id. § 143.089(g). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no

disciplinary action was taken. The court determined that section 143.089(g) made the records confidential. *See id.* at 949; *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied) (restricting confidentiality under Local Gov't Code § 143.089(g) to “information reasonably related to a police officer’s or fire fighter’s employment relationship”); Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of Local Gov't Code § 143.089(a) and (g) files).

You state that the information in Group 3 is maintained in departmental personnel files and is related to internal investigations that did not result in disciplinary action under chapter 143 of the Local Government Code. Based on your representations, we conclude that the department must withhold the information in Group 3 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.³

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You seek to withhold the information in Groups 1, 2, 4, and 5 under section 552.108. We note that some of that information is related to administrative investigations. Section 552.108 is generally not applicable to records of such investigations. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (addressing statutory predecessor). You inform us, however, that all of the information at issue is related to an incident that is the subject of a pending criminal prosecution. You also inform us that the Williamson County District Attorney’s Office has requested that all information relating to that incident be withheld from disclosure because its release would interfere with the prosecution. Based on your representations, we conclude that section 552.108(a)(1) is generally applicable to Groups 1, 2, 4, and 5. *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).

We note that 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88. The department must release basic information, including the names of arrested persons and the arresting and investigating officers and detailed descriptions of the offenses, even if the information does not literally appear on the front page of an offense or arrest

³We note that section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) to refer the requestor to the civil service director or the director’s designee.

report. See Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

You seek to withhold information encompassed by section 552.108(c) under section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In this instance, one of the criminal investigations in Group 2 involves an alleged sexual offense. The department must withhold the identity of the victim of that offense under section 552.101 in conjunction with common-law privacy. See *id.* at 683; Open Records Decision Nos. 393 (1983), 339 (1982). With the exception of the types of information that identify the crime victim, which we have marked, the department must release basic information in accordance with section 552.108(c).⁴ The department may withhold the remaining information in Groups 1, 2, 4, and 5 under section 552.108(a)(1).

In summary: (1) to the extent that the information in Groups 2, 3, and 4 is encompassed by our rulings under sections 552.101 and 552.108 of the Government Code in Open Records Letter Nos. 2008-01777, 2008-02522, 2008-06543, and 2008-09704, the department must dispose of any such information in accordance with those rulings, provided that there has been no change in the law, facts, and circumstances on which the previous rulings are based; (2) the department must withhold the information in Group 3 under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code; (3) the department may withhold the information in Groups 1, 2, 4, and 5 under section 552.108(a)(1), except for the basic information that must be released under section 552.108(c); and (4) in releasing basic information, the department must withhold the marked types of information in Group 2 that identify the victim of the alleged sexual offense under section 552.101 in conjunction with common-law privacy. As we are able to make these determinations, we need not address your other arguments against disclosure.⁵

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

⁴We note that the submitted information includes the social security numbers of arrested persons. 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.

⁵We note that section 552.103 of the Government Code generally does not except from disclosure the same basic information that must be released under section 552.108(c). See Open Records Decision No. 597 (1991).

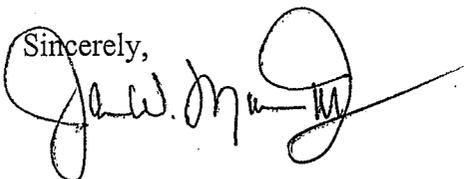
from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). 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,


James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/jh

Ref: ID# 318218

Enc: Submitted documents

c: Mr. Jim McNabb
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(w/o enclosures)