



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 6, 2008

Ms. Cheryl K. Byles  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton, 3<sup>rd</sup> Floor  
Fort Worth, Texas 76102

OR2008-13628

Dear Ms. Byles:

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# 323815.

The City of Fort Worth (the "city") received a request for the "complaint file" of a named city police officer. You state the city will withhold Texas motor vehicle record information pursuant to previous determinations issued to the city in Open Records Letter Nos. 2006-14726 (2006) and 2007-00198 (2007). *See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 7-8 (2001). In addition, you state the city has redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You have released some of the requested information and claim the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that some of the submitted documents are not responsive to the instant request for information. We have marked these documents, which the city need not release in response to this request, and this ruling will not address that information.

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<sup>1</sup>We note that 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.

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 section encompasses information protected by other statutes, such as section 143.089 of the Local Government Code. You indicate that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code 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) of the Local Government Code 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) of the Local Government Code. *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.* Chapter 143 of the Local Government Code 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 the Act. *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 the information at issue pertains to investigations involving the named officer that did not result in any disciplinary action, as defined by chapter 143, against the officer. Based on your representation and our review of the submitted information, we conclude that some of the submitted information is confidential under section 143.089(g) of the Local Government Code. Therefore, the city must withhold the information we have marked under section 552.101 of the Government Code.<sup>2</sup>

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

However, the remaining information is related to an investigation that resulted in the suspension of the police officer. We note that all investigatory materials relating to an investigation that resulted in disciplinary action must be held in the officer's civil service file. *See Abbott v. Corpus Christi*, 109 S.W.3d at 122. Therefore, we conclude that the information we have marked must be part of the officer's civil service file under section 143.089(a). We therefore conclude that the marked information is not confidential under section 143.089(g) of the Local Government Code and may not be withheld from the requestor on that basis under section 552.101 of the Government Code.

Some of the remaining information consists of an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that, except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, a governmental entity is required to release a copy of an accident report to a person who provides the governmental entity with two or more pieces of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with two of the three requisite pieces of information. Therefore, the ST-3 report must be withheld under section 550.065 of the Transportation Code in conjunction with section 552.101 of the Government Code.

The remaining submitted information contains an insurance policy number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the city must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

In summary, the city must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The ST-3 report must be withheld under section 550.065 of the Transportation Code in conjunction with section 552.101 of the Government Code. The city must withhold the insurance policy number you have marked under section 552.136 of the Government Code. The remaining information 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). 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 323815

Enc. Submitted documents

c: Ms. Connie Williams  
P.O. Box 2865  
Grapevine, Texas 76099  
(w/o enclosures)