



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2008

Ms. Candice M. De La Garza
Assistant City Attorney
City of Houston
P. O. Box 1562
Houston, Texas 77251-1562

OR2008-13632

Dear Ms. De La Garza:

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# 323750.

The Houston Police Department (the "department") received a request for three categories of information pertaining to the requestor's request for reinstatement, include all records made during the requestor's training. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted training records for our review. You do not indicate the department has released or will release to the requestor any other responsive information. You also do not inform us the submitted information constitutes a representative sample of the responsive information. We therefore assume, to the extent any additional responsive information existed when the department received the request for information, the department has released it to the requestor. If not, then the department must do so immediately. *See Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).* We will, however, address 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. You contend the submitted information is excepted from disclosure under

¹We note that the department withdrew its initial claim under section 552.103 of the Government Code.

section 552.101 in conjunction with section 143.089 of the Local Government Code.² 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). The police officer's civil service file must contain certain specified items, including commendations, periodic evaluations by the officer's supervisor, and documents from the employing department relating to any misconduct in which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.³ *Id.* § 143.089(a)(1)-(2). 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 explain that the submitted information is maintained in the police department's internal personnel file and consists of documents that pertain to the officer's employment relationship with the department. Thus, section 143.089(g) is applicable. We note that in this instance the requestor is the officer whose records are at issue. However, although section 143.089(e) provides officers a right of access to their own civil service file maintained under section 143.089(a), this office has determined that officers do not have a right to their own internal file maintained by a police department pursuant to section 143.089(g). *See* Open Records Decision No. 650 at 3 (1996) (confidentiality provision of section 143.089(g) contains no exceptions). Thus, because the records at issue are maintained in the police department's internal file pursuant to section 143.089(g), the requestor does not have a right of access to these records under section 143.089. Therefore, based on your representation and our review of the information at issue, we conclude that the submitted information must be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.⁴ As our ruling is dispositive, we do not address your remaining claims.

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

²We understand that the city is a civil service city under chapter 143 of the Local Government Code.

³Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055. An oral or written reprimand does not constitute discipline under chapter 143.

⁴We note that the submitted information includes evaluations. These records must also be held in the officer's civil service file under section 143.089(a). *See* Local Gov't Code § 143.089(a)(1)-(2). We further 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 that person to the civil service director or the director's designee. If you have not already done so, you must refer the requestor to the civil service director at this time.

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# 323750

Enc. Submitted documents

c: Mr. Nelson Gonzalez-Quinones
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(w/o enclosures)