



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2008

Mr. Christopher Gregg
Gregg & Gregg
16055 Space Center Blvd.
Houston, Texas 77062

OR2008-14704

Dear Mr. Gregg:

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# 326207.

The City of League City (the "city"), which you represent, received a request for all employment records regarding a named police officer. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed 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(g) of the Local Government Code. You state that the city is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files: a file that must be maintained by the city's civil service director or the director's designee, and another file that may be maintained by the city's police department for its own use. Local Gov't Code § 143.089(a), (g). 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).

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. 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.* 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, a document relating to a police officer's alleged misconduct may not be placed in the officer's civil service personnel file if there is insufficient evidence to sustain the charge of misconduct or if the disciplinary action was taken without just cause. *See Local Gov't Code* § 143.089(b)-(c). Moreover, information that is reasonably related to a police officer's employment relationship with the police department and that is maintained in a police department's internal file under section 143.089(g) of the Local Government Code is confidential and must not be released. *See id.* § 143.089(g); *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 General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state that in the information in Exhibit A is contained in a file maintained by the city's police department under section 143.089(g) of the Local Government Code. We note, however, that some of the submitted information in Exhibit A pertains to commendations of an officer, and charges of misconduct that resulted in disciplinary action against the officer under chapter 143 of the Local Government Code.¹ Those types of information are subject to section 143.089(a) and must be placed in the officer's civil service file, unless the department has already done so. *See Local Gov't Code* §§ 143.089(a)(1)-(3). We agree, however, that the department must withhold the remaining information in Exhibit A under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

We note that some of the remaining information contains personal financial information. Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (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

¹ Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See Local Gov't Code* §§ 143.051-.055. A letter of reprimand does not constitute disciplinary action under chapter 143.

the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate and embarrassing. See Open Records Decision No. 600 (1992), 545 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally by those regarding receipt of governmental funds or debts owed to governmental entities), 523 (1989) (information related to an individual's mortgage payments, assets, bills, and credit history is excepted from disclosure under the common-law right to privacy). The city must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You state that portions of the remaining information are excepted from disclosure under section 552.117. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Accordingly, the city must withhold the information you have highlighted, as well as the additional information we have marked, under section 552.117 of the Government Code.

You also claim that the remaining information contains Texas motor vehicle information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from disclosure information relating to a Texas motor vehicle driver's license or permit and a Texas motor vehicle title or registration. Gov't Code § 552.130. Upon review, however, we find that the remaining information does not contain any Texas motor vehicle information. Therefore, no portion of the remaining information may be withheld under section 552.130.

In summary, with the exception of the information subject to section 143.089(a), the city must withhold Exhibit A section 552.101 in conjunction with section 143.089(g). The city must withhold the information we have marked under section 552.101 and common-law privacy. The city must also withhold the information you have marked, and the additional information we have marked under section 552.117(a)(2). The remaining information must be released.

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,

A handwritten signature in black ink, appearing to read 'Chris Schulz', with a long horizontal flourish extending to the right.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/ma

Ref: ID# 326207

Enc. Submitted documents

c: Mr. Clavin D. Parks
1100 Nasa Parkway, Suite 310
Houston, Texas 77058
(w/o enclosures)