



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 30, 2009

Mr. Stephen R. Alcorn
Assistant City Attorney
City of Grand Prairie
P.O. Box 534045
Grand Prairie, Texas 75053-4045

OR2009-04106

Dear Mr. Alcorn:

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# 338443.

The Grand Prairie Police Department (the "department") received a request for the personnel file documents, internal affairs investigations, and initial employment documents concerning a named police officer. You state that you do not maintain information responsive to a portion of the request.¹ You state you have redacted portions of the submitted information pursuant to section 552.117(a)(2) of the Government Code. *See* Open Records Decision No. 670 at 6 (2001) (authorizing a governmental body to withhold the home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of its peace officers under section 552.117(a)(2) without the necessity of requesting an attorney general decision). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117² of

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

²Although the department asserts that certain employee information is excepted from release under section 552.024(b) of the Government Code, we understand the department to assert section 552.117 of the Government Code instead. Section 552.024 is not an exception to disclosure under the Act, but instead permits an employee of a governmental body to choose whether to allow public access to certain information relating to the employee that is held by the employing governmental body.

the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have redacted an e-mail address from the submitted documents that you seek to withhold. You do not assert, nor does review of our records indicate, that you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision 673 (2000). As we are able in this instance to ascertain the nature of the information that you have redacted, we will determine whether it is excepted from public disclosure. In the future, the department must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision No. 673 (2001). Failure to comply with section 552.301 may result in the information being presumed public under section 552.302. *See id.*

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by other statutes, such as section 143.089 of the Local Government Code. You state that the City of Grand Prairie 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). 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.⁴ *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 state that the submitted information is contained in the department's internal file for the officer at issue and that this information is maintained under section 143.089(g).⁵ We note that the submitted information includes commendations and performance reviews. These commendations and performance evaluations are subject to sections 143.089(a)(1)

³We note that although you raise sections 552.103 and 552.108 of the Government Code, you make no arguments to support these exceptions. Therefore, we assume you have withdrawn your claims that these sections apply to the submitted information.

⁴Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

⁵We 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. We understand that you have done so.

and 143.089(a)(3). Consequently, if you have not done so already, this information must also be placed in the officer's civil service file. However, we agree that the information maintained in the department's internal file is confidential under section 143.089(g) of the Local Government Code and, therefore, the submitted information must be withheld from disclosure under section 552.101 of the Government Code.⁶

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

Ref: ID# 338443

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶As our ruling is dispositive, we need not address your remaining arguments against disclosure.