



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2009

Mr. Charles H. Weir  
Ms. Donna M. Butler  
Assistant City Attorneys  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-03966

OR2009-06127

Dear Mr. Weir and Ms. Butler:

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# 342716 (City File No. 2009-2811).

The City of San Antonio (the "city") received a request for the complete personnel files of two named city police officers. You state that the city "has no responsive documents regarding the civil service file of [one of the named officers]."<sup>1</sup> You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information we have marked in the submitted information is not responsive to the instant request for information because it consists of the instant request and information created after the request was received. This ruling does not address the public availability of any information that is not responsive to the request, and the city is not required to release that information in response to the request.

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

Next, we must address the city's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) states, within fifteen business days of receiving the request, the governmental body must submit to this office a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(D). The city states it received the request at issue on February 24, 2009. Accordingly, a copy of the specific information requested or representative samples should have been submitted by March 17, 2009. The city timely submitted documents from the civil service file of one of the named officers on March 4, 2009. However, the city did not submit a second set of documents, from the city police department's internal files, until March 25, 2009, well beyond the fifteen-day deadline for submitting this information. Consequently, we conclude that the city failed to comply with the requirements of section 552.301(e) of the Government Code with respect to the second set of documents.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). You claim that the second set of documents is confidential under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code and section 552.130 of the Government Code. Because the application of sections 552.101 and 552.130 can provide compelling reasons for non-disclosure under section 552.302, we will consider your claims under these provisions for the second set of documents. In addition, we will consider your arguments for the timely submitted information from the officer's civil service file.

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 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 provides for the maintenance of two different types of personnel files for each police officer employed by a civil service city: 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. *Id.* § 143.089(a)(1)-(3). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *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).

Section 143.089(g) authorizes a police department to maintain, for its own use, a separate and independent internal personnel file relating to a police officer. *See id.* § 143.089(g). 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). The information in a file maintained by a police department pursuant to section 143.089(g) is confidential. *Id.* § 143.089(g); *see also City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, no pet.) (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 second set of documents consists of information held in files maintained by the city's police department under section 143.089(g). We note that these documents include commendations, periodic evaluations, and documents relating to officer misconduct where the city's police department took disciplinary action against the officer. These commendations, performance evaluations, and disciplinary documents are subject to sections 143.089(a)(1) through 143.089(a)(3). Consequently, if you have not done so already, this information must also be placed in the officers' civil service files. However, we agree that the information maintained in the city police department's internal files is confidential under section 143.089(g) of the Local Government Code and, therefore, the second set of documents must be withheld from disclosure under section 552.101 of the Government Code.<sup>2</sup>

You also seek to withhold portions of one of the named officer's civil service file.<sup>3</sup> You claim the submitted Texas Peace Officer's accident reports are confidential under chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 552.101 also encompasses section 550.065(b) of the Transportation Code, which states, except as provided by subsection (c), accident reports are privileged and confidential. *See id.* § 550.065(b). Section 550.065(c)(4) provides for the release of an accident report to a person who provides two of the following three items of information: (1) the date of the accident; (2) the name of any person involved in the accident; and (3) the specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the Texas Department of Transportation or another governmental entity is required to release a copy of an accident report to a person who provides the entity with two or more of the items of information specified by the statute. *Id.* In this instance, the requestor has not provided the city with two of the three items of information specified by section 550.065(c)(4). Therefore, the city must withhold the accident reports we have marked pursuant to section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. You also claim additional submitted accident reports are confidential under section 550.065(b). We note, however, these additional reports, which are on the city police department's form, are not the type of report protected by section 550.065(b). *See id.* §§ 550.063, .064 (accident reports on forms approved by Department of Transportation). Furthermore, you have not explained how these reports are subject to chapter 550 of the Transportation Code. Therefore, we find the city has failed to demonstrate the applicability

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<sup>2</sup>As our ruling is dispositive for the information in the city police department's internal file we need not address your remaining arguments against its disclosure.

<sup>3</sup>Section 143.089(g) requires a police department that receives a request for information maintained in a file under section 143.089(g) of the Local Government Code to refer that person to the civil service director or the director's designee. As you have submitted documents from both the internal police department files and the civil service file, we understand that you are responding to this request for information on behalf of both the department and the civil service director.

of section 550.065(b) to the remaining accident reports, and they may not be withheld on this basis.

You claim the remaining information includes information protected by section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Upon review, we agree that the city must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.<sup>4</sup>

We also note that the remaining information contains insurance policy numbers subject to section 552.136 of the Government Code.<sup>5</sup> Section 552.136 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." *Id.* § 552.136(b). We have marked the insurance policy numbers that must be withheld under section 552.136 of the Government Code.

In summary, the city must withhold the responsive information in the city police department's internal files under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The city must withhold the accident reports we have marked in the officer's civil service file under section 552.101 of the Government Code in conjunction with section 550.065(b) of the Transportation Code. The city must also withhold the information we have marked in the officer's civil service file under sections 552.130 and 552.136 of the Government Code. The remaining information in the officer's civil service file must be released to the requestor.

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](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

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining argument against the disclosure of the submitted Texas motor vehicle record information.

<sup>5</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in cursive script that reads "Laura E. Ream".

Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/dls

Ref: ID# 342716

Enc. Submitted documents

c: Requestor  
(w/o enclosures)