



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 6, 2010

Mr. Richard L. Bilbie
Assistant City Attorney
City of Harlingen
P.O. Box 2207
Harlingen, Texas 78551

OR2010-00207

Dear Mr. Bilbie:

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# 366409.

The City of Harlingen (the "city") received a request for (1) warrants issued for employees of the city's police department (the "department") during a specified time period and (2) a list of all department employees who have been placed on leave over the same time period. You state that the city has no information responsive to item one of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 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. Section 552.101 encompasses section 143.089 of the Local Government Code, which relates to civil service cities. Section 143.089 is applicable only to information contained in the personnel file of a police officer or fire fighter of a civil service municipality. See Local Gov't Code § 143.089(a), (g); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied); Attorney General Opinion JC-0257 at 6-7 (2000); Open Records Decision No. 562 (1990). You state that the information at issue consists of "information about the disciplining of [department] officers[.]" However, you inform us that the information at issue is not contained in the

¹The 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).

personnel files of any individual officer. Therefore, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

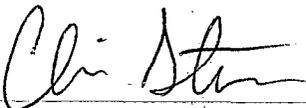
Next, you raise section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code. We note that subchapter G of chapter 143, which includes section 143.1214, generally applies only to municipalities with a population of 1.5 million or more. *See* Local Gov't Code § 143.101(a). As the city is not a municipality with a population of 1.5 million or more, section 143.1214 is inapplicable. Therefore, none of the information at issue may be withheld under section 552.101 on the basis of section 143.1214.

You further argue that the submitted information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). This office has found that section 552.102 only applies to information in the personnel files of governmental employees. In this instance, as previously noted, the information at issue is not maintained in the personnel files of city employees. Therefore, section 552.102 is not applicable to the submitted information. As you raise no further exceptions to disclosure, the submitted information 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, 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, toll free, at (888) 672-6787.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 366409

Enc. Submitted documents

c: Requestor
(w/o enclosures)