



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2010

Ms. Teresa Brown
Senior Open Records Assistant
City of Plano
P.O. Box 860358
Plano, Texas 75086-0358

OR2010-07551

Dear Ms. Brown:

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# 380512.

The Plano Police Department (the "department") received a request for the following documents related to the requestor's citation on January 22, 2010: 1) statement of a named peace officer; 2) named officer's oath of office; 3) named officer's bond, including the name of the insurance company; 4) complaints filed against named officer; 5) affidavits signed against the requestor by named officer; 6) named officer's employment application; 7) named officer's certificates/licenses; 8) certificates of training for named officer; 9) documents created by department employees and/or attorneys containing identifiers related to the requestor; 10) GSA form, SF24 Bid Bond, SF25 Performance Bond, and SF25A Payment Bond; 11) contracts, authorizations, orders concerning the named officer belonging to any multi-jurisdictional task force; 12) documents that created the department; 13) audio and video tapes related to the requestor's citation; and 14) notes, ledgers, and logs related to the requestor's citation. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially we note you have not submitted information responsive to the requests for the named officer's bond; affidavits signed against the requestor by named officer; documents created by department employees and/or attorneys containing identifiers related to the requestor; GSA form, SF24 Bid Bond, SF25 Performance Bond, and SF25A Payment Bond; contracts, authorizations, orders concerning the named officer belonging to any multi-jurisdictional task force; documents that created the department; and notes, ledgers, and logs related to the requestor's citation. To the extent information regarding these portions of the request existed on the date the department received this request, we assume you have released it. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), 302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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 section 143.089 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 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 which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.² *Id.* § 143.089(a)(1)-(2). In *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the police department for its use and the applicability of section 143.089(g) to that file. The records included in the departmental personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made the records confidential. See *id.* at 949; Attorney General Opinion JC-0257 at 6-7 (2000) (addressing functions of section 143.089(a) and (g) files). This confidentiality extends to any records maintained in the internal file that reasonably relate to the police officer's employment relationship. See *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied).

We understand the City of Plano is a civil service city under chapter 143 of the Local Government Code. You represent the documents you marked as "G" are maintained in the

²Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See *id.* §§ 143.051-055.

department's internal files as authorized under section 143.089(g).³ These documents pertain to the officer's employment relationship with the department. Based on your representations and our review of the information at issue, we agree the documents you marked as "G" are confidential pursuant to section 143.089(g). Accordingly, the department must withhold these documents under section 552.101 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime [if] release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The remaining information consists of a video recording pertaining to the requestor's citation, the named officer's anti-bribery statement, and the officer's oath of office. You state the remaining information relates to a pending criminal investigation concerning the incident which led to the issuance of the requestor's citation. Based upon your representation and our review, we conclude the release of the video recording would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the department may withhold the video recording under section 552.108(a)(1). The remaining documents, however, do not contain any information related to the criminal investigation. You do not explain how release of these documents would interfere with the detection, investigation, or prosecution of this crime. Accordingly, the remaining documents may not be withheld under section 552.108(a)(1). As you raise no further exceptions to disclosure of this information, it must be released.

In summary, the department must withhold the documents we marked under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. The department may withhold the video recording under section 552.108(a)(1) of the Government Code. The remaining information must be released.

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

³We note section 143.089(g) requires a police department who 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. Local Gov't Code § 143.089(g).

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,



Jessica Eales
Assistant Attorney General
Open Records Division

JCE/eeg

Ref: ID# 380512

Enc. Submitted documents

c: Requestor
(w/o enclosures)