



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2010

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2010-09746

Dear Mr. Weir:

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# 385190 (San Antonio ORR 2010-5472).

The City of San Antonio (the "city") received a request for seven categories of information relating to a speeding case; specifically for GPS information, an engineering study, the radar operator's license issued to the city's police department (the "department"), information pertaining to the radar used by a named police officer, calibration documents of the radar used, the department's policies regarding radar use, and the named officer's training records. We understand you have released all information responsive to the request except for the named officer's training records. You claim the submitted training records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note the city did not comply with its ten-business-day deadline under section 552.301(b) of the Government Code in requesting this decision. Section 552.301 prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). The city received the instant request for information on April 12, 2010. We note this office does not count the date

the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. You state the city was closed for business on April 23, 2010; therefore, its ten-business-day deadline was April 27, 2010. However, the envelope in which you submitted your request for a decision bears a postmark date of April 28, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the city failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Because section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will consider your argument under this exception.

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 exception encompasses information other statutes make confidential. You raise section 552.101 in conjunction with section 143.089 of the Local Government Code for the officer's training records. We understand the city to be a civil service city under chapter 143 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another 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 which the department took disciplinary action against the officer under chapter 143 of the Local Government Code.<sup>1</sup> *Id.* § 143.089(a)(1)-(2). Information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *See City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied)

You state the submitted training records are maintained in the department's internal files as authorized under section 143.089(g) of the Local Government Code. Based on this representation and our review of the submitted records, we agree they are confidential pursuant to section 143.089(g). Accordingly, the city must withhold the submitted training

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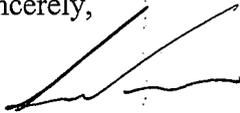
<sup>1</sup>Chapter 143 of the Local Government Code prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

records under section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

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 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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 385190

Enc. Submitted documents

c: Requestor  
(w/o enclosures)