



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 26, 2010

Ms. Judith Sachitano Rawls  
Assistant City Attorney  
City of Beaumont  
P.O. Box 3827  
Beaumont, Texas 77704-3827

OR2010-11130

Dear Ms. Rawls:

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# 388177 (Beaumont OR # 05-03).

The City of Beaumont (the "city") received a request for all documents and media pertaining to the K-9 interview and evaluation of K-9 applicants and a specified e-mail. You state some of the information has been released. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.119, and 552.137 of the Government Code.<sup>1</sup> Further, you state the submitted information may implicate the interests of the applicants, all of whom are city police officers. Accordingly, you notified the Combined Law Enforcement Associations of Texas, which we understand represents the officers at issue, of its right to submit arguments to this office as to why the requested information should not be released.<sup>2</sup> See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>Although you also raise section 552.1175, section 552.117 is the proper exception for information the city holds in its capacity as employer.

<sup>2</sup>As of the date of this letter, we have not received any arguments on behalf of the officers at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 police officer's civil service file must contain specific 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.<sup>3</sup> *See id.* § 143.089(a)(1)-(2). In cases in which a police department investigates an 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). *Abbott v. City of 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 in 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 are subject to release under chapter 552 of the Government Code. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, a document relating to an officer's alleged misconduct may not be placed in his civil service personnel file if there is insufficient evidence to sustain the charge of misconduct. Local Gov't Code § 143.089(b). Information that reasonably relates to a police officer's employment relationship with the police department and that is maintained in a police department's internal personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. San Antonio Express-News*, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied).

You state that the city is a civil service city under chapter 143 of the Local Government Code. You state that the information you have marked is maintained in the city police department's internal personnel files and is therefore confidential under section 143.089(g) of the Local Government Code. We note that some of the information you have marked pertains to internal administrative investigations of the officers that resulted in disciplinary action under chapter 143. Section 143.089(a)(2) requires the city to place all records relating to disciplinary action in the police officer's civil service file and such records are subject to release. *See* Loc. Gov't Code § 143.089(a)(2), (f). ORD 562 at 6. In this instance, the

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<sup>3</sup>Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *See* Local Gov't Code §§ 143.051-.055.

request was received by the city, which is required to maintain a civil service file subject to section 143.089(a). Therefore, the information pertaining to investigations that resulted in disciplinary action, which we have marked, must be placed in the police officers' civil service files, and the city may not withhold this information under section 552.101 of the Government Code. As you raise no further exceptions to disclosure of this information it must be released. However, upon review, we agree the remaining information you have marked must be withheld under section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the city's section 552.102(a) claim together with its common-law privacy claim under section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 545 (1990). Upon review, we find the information we have marked is intimate or embarrassing and of no legitimate public concern. Thus, the city must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate how any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining information is confidential under the doctrine of common-law privacy, and it may not be withheld under either section 552.101 or section 552.102 of the Government Code.

You also raise section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure the home address, home telephone number, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the

cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We also note that section 552.117(a)(2) is not applicable to a former spouse or the fact that a peace officer has been divorced. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, the city must withhold the information we have marked, including the cellular telephone number we have marked, if the officer paid for the service with his own funds, under section 552.117(a)(2) of the Government Code. If the officer did not pay for the cellular telephone service related to the number we marked, this number may not be withheld under section 552.117(a)(2).

You raise section 552.119 of the Government Code for the submitted video recordings. Section 552.119 provides the following:

(a) A photograph that depicts a peace officer as defined by Article 2.12, Code of Criminal Procedure, the release of which would endanger the life or physical safety of the officer, is excepted from [required public disclosure] unless:

- (1) the officer is under indictment or charged with an offense by information;
- (2) the officer is a party in a civil service hearing or a case in arbitration; or
- (3) the photograph is introduced as evidence in a judicial proceeding.

(b) A photograph excepted from disclosure under Subsection (a) may be made public only if the peace officer gives written consent to the disclosure.

Gov't Code § 552.119. Under section 552.119, a governmental body must demonstrate, if the documents do not demonstrate on their face, that release of the photograph would endanger the life or physical safety of a peace officer. You state that the officers depicted in the submitted video recordings are subject to working undercover. Upon review, we find release of the video images of the officers at issue would endanger these officers' lives or physical safety. Therefore, the submitted video recordings of the peace officers must generally be withheld under section 552.119 of the Government Code. We note, however, that the requestor is the officer depicted in the first video recording. Section 552.023(a) of the Government Code states that a person has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person's privacy interests. *Id.* § 552.023(a). Accordingly, pursuant to section 552.023 of the Government

Code, the requestor has a special right of access to his own image, and this information must be released to him.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail addresses we have marked in the remaining information are not the types specifically excluded by section 552.137(c) of the Government Code. Therefore, the city must withhold the marked e-mail addresses under section 552.137 of the Government Code unless the owners of the e-mail addresses at issue have consented to their release.<sup>4</sup>

In summary, with the exception of the information pertaining to disciplinary actions, the city must withhold the information you have marked 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 information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The city must withhold the information we have marked under section 552.117(a)(2) of the Government Code, including the cellular telephone number we have marked if the officer paid for the service with his own funds. With the exception of the video depicting the requestor, the city must withhold the video recordings under section 552.119 of the Government Code. The city must also withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released.<sup>5</sup>

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.

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<sup>4</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>5</sup>We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a). Accordingly, if the city receives another request for this information from a different requestor, the city must again seek a ruling from this office.

Sincerely,

A handwritten signature in cursive script that reads "Kate Hartfield".

Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 388177

Enc. Submitted documents

c: Requestor  
(w/o enclosures)