



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 17, 2012

Mr. Ronald J. Bounds  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR2012-20266

Dear Mr. Bounds:

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# 473951 (CCPD File No. JSil1).

The Corpus Christi Police Department (the "department") received a request for a specified department policy, complaints filed against the department or its officers in the last five years, and the results of any internal investigations of the complaints. You state the department is making some of the requested information available to the requestor. You claim some of 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 samples of information.<sup>1</sup>

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 made confidential by other statutes, such as section 143.089 of the Local Government Code. You state the City of Corpus Christi

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<sup>1</sup>We assume that the "representative samples" 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 that those records contain substantially different types of information than that submitted to this office.

(the "city") is a civil service city under chapter 143 of the Local Government Code. Section 143.089 contemplates two different types of personnel files for police officers in a civil service city: a civil service file the civil service director is required to maintain and an internal file 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. *Id.* § 143.089(a)(1)-(2). Chapter 143 prescribes the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. *Id.* §§ 143.051-.055; *see* Attorney General Opinion JC-0257 (written reprimand is not disciplinary action for purposes of chapter 143 of the Local Government Code).

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. 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 the Act. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

You state the submitted internal affairs investigation files are maintained in the internal files of the department pursuant to section 143.089(g). We note a portion of the information at issue relates to findings of misconduct that resulted in disciplinary action. An officer's civil service file must contain documents relating to any misconduct in those cases where the police department took disciplinary action against the officer. *See* Local Gov't Code § 143.089(a)(2). Therefore, this type of information is subject to section 143.089(a) and must be placed in the officer's civil service file, unless the department has already done so. You state the department has referred the requestor to the city's civil service director. Therefore, we conclude the submitted internal affairs investigation files are confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code on that basis.

Section 552.108(b)(1) of the Government Code excepts from disclosure "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in

matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution[.]” Gov’t Code § 552.108(b)(1); *see* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). This office has concluded that section 552.108(b) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORD 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

You state the information you have marked under section 552.108(b)(1) consists of procedures used by the department in “active shooter” scenarios. You assert these procedures are not commonly known to the general public and their release would “make it easier for potential shooters to anticipate what techniques might be utilized by [d]epartment officers to stop such shooters in given law enforcement scenarios.” Further, you state these procedures reveal the number of department officers that might be required to respond in these situations and how the officers should be uniformed. You argue release of this information could “allow such individuals to identify certain [d]epartment officers, avoid criminal detection, and endanger” ongoing operations. Based on these representations and our review, we determine release of the information at issue would interfere with law enforcement. Therefore, the department may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

In summary, the department must withhold the submitted internal affairs investigation files 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 information you have marked under section 552.108(b)(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 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,



Kristi L. Wilkins  
Assistant Attorney General  
Open Records Division

KLW/ag

Ref: ID# 473951

Enc. Submitted documents

c: Requestor  
(w/o enclosures)