



May 23, 2000

Mr. Hugh W. Davis, Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR2000-2020

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136064.

The City of Fort Worth (the “city”) received a request for the Fort Worth Police Department’s complete investigation file concerning the five police officers “implicated in the alleged hogtying of Luis Hernandez on January 1, 1999,” the Critical Incident Report concerning that incident, the Internal Investigations files of the five officers, and the “Chain of Command reviews” of the five officers. You inform this office that “information from the Civil Service files of the officers responsive to [the] request is being made available to Ms. Griffith.” You claim that the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code and that some of the requested information is made confidential pursuant to section 552.101 of the Government Code in conjunction with section 143.089 of the Local Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You have provided this office responsive information organized as Exhibits B and D.¹ Exhibit B is the Critical Police Incident file, which you tell us is the same as the “complete investigation file” requested. The chain of command reviews requested, you inform us, are part of the Internal Affairs Division files requested, of which you have submitted a representative sample as Exhibit D.² Section 552.101 of the Government Code protects

¹Exhibit A is the written request of Ms. Griffith; Exhibit C is a letter evidencing your argument that the investigation is ongoing.

²We assume that 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters’ and police officers’ civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers: one that is maintained by the city’s civil service director and the other by the city police department.

Information contained in personnel files held by the civil service director, including all records relating to misconduct by police officers that resulted in disciplinary action, as contemplated by chapter 143, must be released to the public unless the information comes within one of the Public Information Act’s exceptions to required public disclosure. You state that a copy of the director’s file is being provided to the requestor. You inform us, however, that the information the city seeks to withhold under section 143.089(g) of the Local Government Code is contained in the records of the Internal Affairs Division and concerns ongoing internal investigations that have not resulted in disciplinary action. See Local Gov’t Code § 143.089(a)(2). You therefore contend that the requested information is made confidential under section 143.089(g) and thus may not be released to the requestor. As to the information contained only in records of the Internal Affairs Division, we concur. The city may not release Exhibit D or similar information Exhibit D was intended to represent.

You claim that section 552.108 excepts Exhibit B from public disclosure because the release of the information would interfere with law enforcement. Section 552.108, the “law enforcement exception,” provides that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from public disclosure if “release of the information would interfere with the detection, investigation, or prosecution of crime” or “it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.” Gov’t Code § 552.108(a)(1),(a)(2). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. See Gov’t Code §§ 552.108(a)(1), (b)(1), .301(b)(1); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

In a case that is still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See generally *Houston Chronicle Publishing 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); Open Records Decision No. 127 (1976). As you inform us that the investigation is ongoing, you may withhold from Exhibit B all but basic, front page information and any other

information specifically made public by statute.³ Therefore, the city must release the autopsy report, including photographs, pursuant to section 11 of article 49.25 of the Code of Criminal Procedure and must release Part I of the custodial death report pursuant to article 49.18 of the Code of Criminal Procedure. *See* Open Records Decision No. 521 at 5 (1989).

In summary, the city must withhold Exhibit D and may withhold Exhibit B except for the autopsy report, Part I of the custodial death report, and basic information regarding the incident. As we resolve the issues here involved under section 552.108 and section 552.101 in conjunction with section 143.089 of the Local Government Code, we do not address your section 552.103 argument.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

³The Public Information Act's exceptions to required disclosure do not apply to information expressly made public by other statutes. Open Records Decision No. 525 (1989).

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr/ljp

Ref: ID# 136064

Encl. Submitted documents

cc: Ms. Barbara Griffith - Bureau Chief
WFAA TV - Spirit of Texas
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Fort Worth, Texas 76102
(w/o enclosures)