

PUBLIC INFORMATION REQUESTS DIRECTED TO POLICE DEPARTMENTS

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OVERVIEW

- ⦿ Efforts to withhold information from public disclosure
- ⦿ Procedural compliance
- ⦿ Information maintenance

WITHHOLDING APPROACHES

◉ Coverage vs. Exception

- Self adjudication
- Submission to AG

SELF ADJUDICATION

- Withholding information without necessity of seeking AG decision
 - Previous determination
 - Same information, same department
 - Same clearly delineated category of information
 - Specific authorization
 - Information covered by sec. 552.117; 552.1175; 552.024; 552.130, as examples

PROCEDURES

- ⦿ Strict compliance with all aspects of Subchapter G is required
- ⦿ Consequence of failure is presumption that requested information is required to be disclosed and must be released.

PROCEDURES

- ⦿ The request to withhold
- ⦿ Notifications to the requestor
- ⦿ Submission of the information

- ⦿ AG will review for compliance as well as substantive arguments, *and may base decision on compliance alone.*

PROCEDURES

⦿ About lack of compliance...

- Must withhold vs. may withhold
- Many law enforcement related exceptions are mandatory. AG may determine that information must be withheld despite lack of compliance
- This is NOT to be relied upon

PROCEDURES

- ⦿ Think about timelines
- ⦿ Think about retrieval
- ⦿ Think about review

COMMONLY REQUESTED INFORMATION

- ⦿ Records of incidents / investigations
- ⦿ Accident reports
- ⦿ Departmental policies or rules
- ⦿ Personnel information

INCIDENTS / INVESTIGATION

- Sec. 552.108 - Undue interference
 - Pending cases
 - Presumption of interference
 - Protection of witnesses
 - Investigation and prosecution strategy
 - Identities of undercover personnel
 - Concluded cases
 - Cases not resulting in conviction or deferred adjudication

“FRONT PAGE” INFORMATION

- Houston Chronicle Publishing Co. v. City of Houston; ORD No. 127 (1976)
 - What, when, where
 - Offense charged
 - Arresting officers
 - Name of complainant - other exceptions may apply
 - Common law privacy - sex crimes
 - Informer’s privilege
 - Does not apply to information made public by other law. Ex. Transportation Code (CR-3)

DEPARTMENTAL POLICIES

○ Sec. 552.108

- Release would impair officers' ability to make arrests, investigate crime
- Release would place wrongdoers at an advantage by anticipating police response / tactics
- Does not apply to procedures that restate generally known common-law rules, constitutional limitations, or Penal Code provisions

OFFICER MISCONDUCT INFORMATION

- ◉ Civil service cities - comprehensively regulated by sec. 143.089
- ◉ Non-civil service cities - common law privacy?
- ◉ Officers with bargaining rights - modification to TPIA by agreement?

PERSONNEL FILES - 143.089

⦿ (a) file:

- commendations, congratulations, or honors
- any misconduct resulting in disciplinary action
- periodic evaluations
- Sec 143.082 efficiency reports

⦿ (g) file

- Whatever the department head wants

PERSONNEL FILES - 143.089

○ (a) to (g) and vice versa

- (b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.
- (c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by Subsection (a)(2) shall be removed from the employee's file if the commission finds that:
 - (1) the disciplinary action was taken without just cause; or
 - (2) the charge of misconduct was not supported by sufficient evidence.

PERSONNEL FILES

- Who else maintains a file?
 - Payroll records
 - Employee benefits records
 - Leave usage records
- Are these (a), (g), or something else?

QUESTIONS?

THANK YOU

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