



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 27, 1994

Mr. Robert E. Hager  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 North Akard  
Dallas, Texas 75201

OR94-280

Dear Mr. Hager:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24243.

The City of Coppell (the "city") received a request for documents that were part of an investigation of a complaint against a Coppell Police Department officer. The documents you have submitted to this office as responsive to the request include the complaint that was filed, various letters, memoranda, and statements.<sup>1</sup> You contend that the documents are excepted from disclosure under sections 552.101, 552.102(a), 552.108 and 552.111 of the Texas Government Code. You also assert that one memorandum is "attorney work-product and not subject to release." We will address each of your arguments.

You urge that these documents be excepted under section 552.101 or 552.102(a) to protect the privacy interests of the individuals involved. You also state:

Since none of the matters were sustained as fact upon which a termination or employee action was taken, we fear that it may place all parties involved in a false light in the public and damage their reputations or otherwise impair their ability for future employment.

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<sup>1</sup>You have informed this office that the documents sent for review consist of the investigative file information that is at issue. In Open Records Letter No. 94-165 (1994), this office determined that the complaint which was the basis of this investigation must be released. Therefore we assume that the complaint itself has already been released and a copy was forwarded to this office merely for informational purposes.

We note that the privacy interests protected by sections 552.101 and 552.102 do not encompass false-light privacy. Open Records Decision No. 579 (1990) at 3-8. The test to determine if information is private and excepted from disclosure under either section 552.101 or section 552.102(a) is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). A review of the documents indicates that the allegations involved may be highly intimate or embarrassing to the individuals mentioned, but there is a legitimate public interest in the information. In Open Records Decision No. 579 at 7, we stated:

we feel that the purpose of the act is best served by the disclosure of even doubtful information, even if embarrassing, if it relates to the conduct of the public's affairs. If, as in the case before us, the information is uncertain or contradictory, the Open Records Act allows the public to review the evidence and come to its own conclusions . . . .

The city may not withhold these documents under either section 552.101 or 552.102(a). However, we note that some of these documents contain the home address of a police officer. Police officers' home addresses and home telephone numbers are excepted from disclosure by section 552.117(1)(B).<sup>2</sup> Therefore, this information may not be disclosed. Gov't Code § 552.352 (distribution of confidential information is a criminal offense).

You contend that the documents which were part of the investigatory file may be withheld under section 552.108, which provides that:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure].

(b) An 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 is excepted from [required public disclosure].

You have informed this office that the internal affairs investigation into the complaint has been concluded with the final disposition that the allegations were determined to be "unfounded." For information in a closed investigation to be excepted from disclosure

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<sup>2</sup>The documents also contain some information about a private citizen. We note that home addresses and telephone numbers of private citizens are not excepted from disclosure under the Open Records Act. Open Records Decision No. 455 (1987) at 2.

under section 552.108, you must demonstrate how release of the information will unduly interfere with a legitimate interest relating to law enforcement or the investigation or prosecution of crime. Open Records Decision Nos. 518 (1989) at 6 (if not apparent on the face of the information, governmental body must show how release will interfere with law enforcement); 434 (1986) at 2 (relevant question is whether release will undermine law enforcement or prosecution). As you have not shown how release of information about this closed investigation would interfere with law enforcement or prosecution, the city may not withhold this information under section 552.108.

You also contend that the requested documents may be withheld under section 552.111. This office previously held that section 552.111 (former section 3(a)(11) of article 6252-17a, V.T.C.S.) was applicable to advice, opinion, and recommendation used in the decision-making process within an agency or between agencies. Open Records Decisions No. 574 at 1-2, 565 at 9 (1990). However, in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the court addressed the proper scope and interpretation of this section. In light of that decision, this office re-examined its past rulings. In Open Records Decision No. 615 (1993) at 5, this office held that

in order to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . [emphasis in original]

Section 552.111 excepts interagency and intra-agency memoranda and letters from disclosure only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. However, the documents at issue do not relate to the policymaking function of the city's police department. As these documents pertain solely to the investigation of a police officer, which is an internal administrative and personnel matter, they may not be withheld under section 552.111.

You have enclosed a draft memorandum that you assert is exempt from disclosure as attorney work-product. We assume you are asserting that the information may be withheld under section 552.103, which provides an exception for information relating to litigation or settlement negotiations. In Open Records Decision No. 429 (1985) at 4, we stated that the attorney work-product doctrine is one aspect of the section 552.103 exception. However, you do not indicate that the memorandum is related to any litigation that is pending or reasonably anticipated. It is the city's burden to show that section 552.103 is applicable to the records at issue. As you have not shown this exception is applicable, the draft memorandum may not be withheld under section 552.103. Open Records Decision No. 574 (1990) at 6.<sup>3</sup>

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<sup>3</sup>In Open Records Decision No. 304 (1982), this office determined that section 552.101 would except information under the attorney work-product privilege as "information deemed confidential by

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/MAR/rho

Ref.: ID# 24243

Enclosures: Submitted documents

cc: Mr. Jason R. Searcy  
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(w/o enclosures)

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law." However, Open Records Decision No. 574 overruled that decision. See Open Records Decision No. 575 (1990) at 2 (discussion of attorney-client privilege and attorney work-product doctrine).