



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1994

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Legal Affairs Division
P.O. Box 99
Huntsville, Texas 77342-0099

OR94-770

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. Your request was assigned ID# 28254.

The Texas Department of Criminal Justice (the "department") has received two requests for certain information concerning the selection and promotion process for several employment positions with the department. Generally, the requestors seek information relating to the qualifications of persons competing for various employment positions, including, *inter alia*, applications, certifications, and the scores assigned by evaluators. You object to releasing only the information relating to scores, ranking, and scoring sheets.¹ You have submitted this information to us for review and claim that sections 552.108 and 552.111 of the Government Code exempt it from required public disclosure.

We address first your assertion that section 552.108 of the Government Code exempts the requested information from required public disclosure. Section 552.108 exempts from disclosure the following information:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

¹We assume that the remainder of the requested information has been or will be made available to the requestors. See Open Records Decision No. 363 (1983).

(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.

Gov't Code § 552.108. When the "law enforcement" exception is claimed for an internal record or notation, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). Whether information falls within the section 552.108 exception must be determined on a case-by-case basis. *Id.* at 2; Open Records Decision No. 287 (1981) at 1-2. The Texas Department of Criminal Justice is a law enforcement agency within section 552.108 of the act. Open Records Decision No. 413 (1984).

You base your section 552.108 claim on a general theory that releasing employee selection records would undermine the effectiveness of the employee selection and promotion process because it would have a chilling effect on the evaluator's ability to be frank in giving his or her evaluation of a candidate. Essentially, you argue that section 552.108 incorporates aspects of the section 552.111 exception. This office, however, has never held that section 552.108 incorporates the policy rationale underlying section 552.111. Moreover, the rationale for section 552.111 that you seek to incorporate into section 552.108 was rejected in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). (See discussion of section 552.111 *infra*.) We adhere to the test stated above that, when the "law enforcement" exception is claimed for internal records and notations, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how release would unduly interfere with law enforcement. We conclude that you have not met this test. Accordingly, we conclude that the department may not withhold the submitted information under section 552.108 of the Government Code.

You also claim that the requested information is excepted from required public disclosure by section 552.111 of the Government Code, which excepts information that constitutes an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the section 552.111 exception and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. As the information submitted to us for review relates to an internal administrative and personnel matter, we conclude that section 552.111 does not except it from required public disclosure. Accordingly, the department must release the requested information in its entirety.

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 28254

Enclosures: Submitted documents

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