



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 25, 1995

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

OR95-212

Dear Mr. Peck:

You ask whether 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# 27571.

The Texas Department of Criminal Justice (the "department") received a request for information relating to applicant interview rating forms from promotional board members regarding two department positions.¹ You claim that the requested information is excepted from required public disclosure under sections 552.108 and 552.111 of the Government Code.

Section 552.108 excepts from disclosure:

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

¹The requestor also seeks to review his entire personnel file. As you make no assertions concerning the personnel file, we assume for purposes of this ruling that you have released the information to the requestor.

When the "law enforcement" exception is claimed, 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 department 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 partially on a general theory that releasing employee-selection records would undermine the effectiveness of the employee-selection and promotion process; you believe 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 *infra* discussion of section 552.111. You may not withhold the requested information on the basis of this argument under section 552.108.

You also contend under section 552.108 that releasing the requested information would create "the potential for mind tripping and psychological manipulation on the part of canny inmates using this information." This assertion is too conjectural in nature, and you have not explained its significance to the requests for records at issue here. You have not demonstrated that releasing the requested information would unduly interfere with law enforcement, nor does the submitted information provide an explanation on its face. Accordingly, we conclude that the department may not withhold the information under section 552.108 of the Government Code.

Section 552.111 excepts from disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.* 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.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/LBC/rho

Ref: ID# 27571

Enclosures: Submitted documents

cc: Mr. F. Donovan Crippen
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(w/o enclosures)