



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 13, 1995

Ms. Detra G. Hill
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
501 Police and Courts Building
Dallas, Texas 75201

OR95-1407

Dear Ms. Hill:

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# 32522.

The City of Dallas (the "city") received a request for access to 1) an internal affairs investigation involving two former police officers and 2) investigations and/or administrative reviews of a former police chief and officer conducted by former police chiefs. You have provided a representative sample of the documents at issue and claim that the requested documents are excepted from disclosure pursuant to sections 552.101 and 552.107 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that a portion of the documents contain criminal history information which is excepted from disclosure pursuant to sections 411.083, 411.084, and 411.087 of the Government Code in conjunction with section 552.101 of the Government Code. Section 411.083 provides that

(a) Criminal history record information maintained by the department is confidential information for the use of the department, and except as provided by this subchapter, may not be disseminated by the department.

(b) The department shall grant access to criminal history record information to:

(1) criminal justice agencies;

....

(c) The department may disseminate criminal history record information under Subsection (b)(1) only for a criminal justice purpose.

Section 411.084 provides that

Criminal history record information obtained from the department under this subchapter:

(1) is for the exclusive use of the authorized recipient of the information; and

(2) may be disclosed or used by the recipient only if, and only to the extent that, disclosure or use is authorized or directed by:

- (A) this subchapter;
- (B) another statute;
- (C) a rule adopted under a statute; or
- (D) an order of a court of competent jurisdiction.

Section 411.087(b) provides that

Any restriction or limitation in this subchapter on criminal history record information that a person, agency, department, political subdivision, or other entity is entitled to obtain from the department applies equally to the criminal history record information that the person, agency, department, political subdivision, or other entity is entitled to obtain from the identification division of the Federal Bureau of Investigation or other criminal justice agency.

Part of the requested documents consist of criminal history information obtained from the Department of Public Safety as authorized by section 411.083 of the Government Code. You may therefore release the information only as prescribed in section 411.084 of the Government Code.

Additionally, title 28, part 20 of the Code of Federal Regulations governs the release of criminal history information that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). Thus, the city may not release any criminal history information generated by the federal government or another state except in accordance with federal regulations. See Open Records Decision No. 565 (1990).

You seek to withhold a portion of the submitted documents pursuant to section 552.107(1) which excepts from disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Although section 552.107(1) excepts information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5, 462 (1987) at 13-14 (explaining scope of attorney-client privilege).

Information may be withheld under section 552.107(1) only to the extent that it documents confidences of a governmental representative to its attorney or reveals the attorney's legal advice and opinions. Open Records Decision Nos. 589 (1991), 574 (1990). Under rule 503(b) of the Texas Rules of Civil Evidence and rule 503(b) of the Texas Rules of Criminal Evidence, "a client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the renditions of professional legal services to the client." A "confidential communication" is a communication "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." Tex. R. Civ. Evid. 503(a)(5). Thus, if the communication from a client to his attorney is not intended to be confidential, it is not privileged information. See Open Records Decision No. 574 (1990) at 7.

You have presented various documents for our review. Some of the documents clearly contain legal advice and opinions of city attorneys, as well as client confidences. We have marked those portions of the documents that are excepted from disclosure. The majority of the documents, however, do not contain information excepted from disclosure under section 552.107(1). With the exception of portions of a memorandum between the city attorney and the chairman of the review board, many of the documents submitted for our review merely recount factual events in a particular lawsuit or summaries of meetings. See Open Records Decision No. 574 (1990). Moreover, the remaining documents do not contain attorney opinion or advice, nor do they reveal client confidences.¹ Thus, the information is not excepted from required public disclosure pursuant to section 552.107(1).

¹One of the submitted documents was written by a particular officer to the executive chief of police. This information is not excepted from disclosure as a client confidence because the

Except as noted above, you must release the requested information.² 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/LMM/rho

Ref.: ID# 32522

Enclosures: Marked documents

cc: Ms. Nora Lopez
Reporter
The Dallas Morning News
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2711
(w/o enclosures)

(Footnote continued)

officer/employee is not a "representative" of the city for purposes of rule 503(a)(2) of the Texas Rules of Civil Evidence. See *National Tank Co. v. Brotherton*, 851 S.W.2d 193, 196 (Tex. 1993).

²In reaching our conclusion here, we 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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.