Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 9, 1996

Mr. Mitchell S. Milby
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR96-1418

Dear Mr. Milby:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100088.

The City of Dallas (the "city") received a request for copies of the "appeal hearing minutes and any other documents utilized by Mr. Benavidias [sic] in his Jan. 18, 1996 hearing to determine that Earl Givens would not be given his job back as a Dallas Police Officer or any documents generated that sustain Earl Givens['] termination." You assert that records regarding Officer Givens' termination and the IAD records are excepted from required public disclosure based on sections 552.102 and 552.108 of the Government Code and also based on the common-law right to privacy.

You inform us that the Dallas Police Department received the request for information on May 7, 1996. This office received your request for an open records ruling on May 21, 1996. Section 552.301(a) of the Government Code provides that:

> A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney*

> *general's decision and state the exceptions that apply within a reasonable time but not later than the 10th calendar day after the date of receiving the request.* (Emphasis added).

Since the city received the request on May 7, 1996, and requested a decision from this office on May 21, 1996, the city failed to seek our decision within the ten-day period mandated by section 552.301(a). Because the city did not request an attorney general decision within the deadline provided by section 552.301(a), the requested information is presumed to be public information. Gov't Code § 552.302; *see Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. A compelling reason exists when the requested information is made confidential by some other source of law or when a third party's interests are at stake. *See* Open Records Decision No. 150 (1977). We have considered your section 552.108 arguments. We conclude that your section 552.108 claim does not present a compelling reason to overcome the presumption that the information is public.

Section 552.102 of the Government Code states that

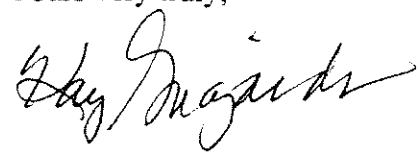
> [i]nformation is excepted from [required public disclosure] if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, . . .

The test to be applied to information claimed to protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider your section 552.102 and common-law privacy claims together. Information may be withheld under section 552.102 or the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

The information at issue is not about Officer Givens' private affairs, but is a report of a formal investigation into allegations of misconduct in Officer Givens' performance of his duties as a police officer. Therefore, the information is not excepted from required public disclosure based on section 552.102 of the Government Code or the common-law right to privacy. However, the city must withhold the polygraph information, which section 19A of V.T.C.S. article 4413 (29cc) makes confidential. Gov't Code § 552.101. We have marked the documents accordingly.

We are resolving this matter with this 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 may 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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100088

Enclosures: Marked documents

cc: Ms. Alicia B. Hightower
9907 Gulf Palms Drive
Dallas, Texas 75227
(w/o enclosures)