



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 9, 1996

Mr. Richard C. Terrell
City Attorney
City of Alice
P.O. Box 1621
Alice, Texas 78333

OR96-1617

Dear Mr. Terrell:

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# 100531.

The Chief of the Alice Police Department (the "department") received a request for specific information pertaining to the disciplining of two named police officers including "[a]ny information not specifically requested but relevant to the disciplining of Alice police officers. . . ." You inform us that you released to the requestor each officer's personnel status form and suspension notification letter. You assert that an investigative report, witness statements and polygraph examination information are excepted from required public disclosure based on sections 552.101, 552.102, 552.108, 552.111 and 552.117 of the Government Code.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n 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. You assert that this exception applies to the requested records because you contend that its release would make it more difficult if not impossible for the department to conduct internal investigations concerning violations of city personnel policies and penal law. You contend that the release of the information would have a chilling effect on obtaining the cooperation of the witnesses and subjects of the investigation.

However, apparently the department is not going to prosecute the subjects of the investigation. You state that “[a]lthough no criminal actions have been pursued and none are anticipated, the information contained in the . . . investigative file is held by the . . . [d]epartment and deals with the detection, investigation, or prosecution of crime.” Where no criminal investigation or prosecution results from an internal police investigation of a police officer’s conduct, section 552.108 is inapplicable. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. Civ. App. --El Paso 1992, writ denied). We therefore conclude that the department may not withhold the requested information based on section 552.108.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation* 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.). Information may be withheld under section 552.101 in conjunction with 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 Industrial Foundation*.

With the exception of a small amount of information we have marked, we do not believe the common-law right to privacy protects the requested information from public disclosure. Although we believe portions of the information contain highly intimate and embarrassing facts about the two police officers, the subjects of the investigation, we cannot say that these facts are about those officer’s private affairs since the investigation concerns conduct at the workplace. Moreover, you do not assert, and the records do not disclose, that the misconduct under investigation involved a kind of victim whose privacy should be protected in spite of the fact that the conduct occurred at work. *See Industrial Foundation* at 683 (protecting privacy of victims of sexual assault and victims of mental or physical abuse in workplace), *Ellen* 840 S.W.2d 519 (protecting privacy of victim of sexual harassment); *cf.* Open Records Decision No. 339 (1982) (protecting privacy of victim of sexual assault). Furthermore, the public has a legitimate interest in knowing information about how its business is being conducted, including the on-the-job conduct of public employees.

You raise section 552.111 of the Government Code. Section 552.111 of the Government Code excepts from required public disclosure:

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). An agency's policymaking functions do not encompass routine internal administrative and personnel matters. *See id.* As the information at issue concerns a personnel matter, we conclude that section 552.111 is inapplicable.

Finally, we agree that the department must withhold from disclosure the polygraph information we have marked based on section 19a of V.T.C.S. article 4413(29c). Gov't Code § 552.101. We also agree that the department must withhold from disclosure certain information made confidential by section 552.117(2) of the Government Code. 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# 100531

Enclosures: Marked documents

cc: Mr. Jim Terrel
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(w/o enclosures)