



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 27, 1996

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

OR96-2275

Dear Mr. Peck:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102057.

The Texas Department of Criminal Justice (the "TDCJ") received a letter from the sister of an inmate, who states in her letter that she had requested an investigation concerning the inmate. She asked for a copy of that investigation report. You submitted to this office reports concerning allegations made by the inmate.<sup>1</sup> You assert that the records at issue are excepted from disclosure pursuant to sections 552.101 and 552.108.<sup>2</sup>

You argue that the information at issue may not be disclosed due to the privacy interests of the inmate who made the allegations and the individuals about whom the allegations were made. The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in section 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). You state that the inmate "has not given permission to share the details of our investigations of his adventures and misadventures and nonadventures." We note initially that the requestor provided a letter from the inmate giving permission to provide information to the requestor.

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<sup>1</sup>You also submitted letters from the inmate to the requestor. The requestor provided copies of these letters to the TDCJ. Since the requestor apparently already has the letters sent by her brother, we assume that these letters are not at issue in this request.

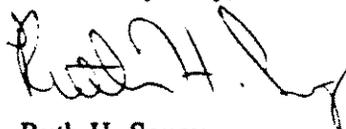
<sup>2</sup>You initially asserted that sections 552.103, 552.107, and 552.111 of the Government Code were applicable, but provided no arguments concerning these exceptions from disclosure.

The allegations concern the job performance and work behavior of public servants. There is a legitimate public interest in public servants' conduct while on-duty and how they perform job functions. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is narrow). We note that there is a legitimate public interest in the allegations and the fact that allegations were made, even if the allegations are not true.<sup>3</sup> See Open Records Decision No. 579 (1990) at 7 (legitimate public interest in release of information that may be embarrassing or questionable.) Thus, most of the information at issue may not be withheld from disclosure based on the privacy provisions encompassed by section 552.101. However, you should redact the names of the inmates from the documents at issue, as their identities are protected under section 552.101. We note that an officer's social security number appears in the records and, pursuant to section 552.117 of the Government Code, may need to be redacted.

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; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). You contend that revealing the identities of the inmates about whom allegations were made could expose the inmate who made the allegations "to retaliation and harassment." You state that "someone" could severely beat the inmate who complained. We note that the records at issue are generally related to personnel matters rather than law enforcement and prosecution. Except for the identities of the inmates about whom the allegations were made, the records at issue may not be withheld from disclosure under section 552.108.

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 any questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

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<sup>3</sup>We note that the privacy interest protected by section 552.101 does not encompass false light privacy. Open Records Decision No. 579 (1990) at 3-8. In *Diamond Shamrock Refining & Marketing Co. v. Mendez*, 844 S.W.2d 198, 201 (Tex. 1992), the Texas Supreme Court declined to determine if false light privacy even exists as a tort in Texas. See 844 S.W.2d at 207 (Gonzalez, J. concurring and dissenting, notes that such a tort would largely duplicate defamation).

Mr. Leonard W. Peck, Jr. - Page 3

Ref: ID# 102057

Enclosures: Submitted documents

cc: Ms. Teresa Ruiz  
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(w/o enclosures)