



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 20, 1996

Mr. Mark T. Sokolow
City Attorney
City of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77641-1089

OR96-2454

Dear Mr. Sokolow:

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# 102621.

The City of Port Arthur (the "city") received a request for a "copy of all city correspondence between the city and employee Rosie Jones within the past 6 months." You assert that the requested information is excepted from required public disclosure based on Government Code sections 552.102, 552.103, 552.108 and 552.111.

The test to be applied to information claimed to be protected under section 552.102 of the Government Code is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 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. *See 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 Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We do not believe the requested information concerns a person's private affairs, but rather a person's city employment. Accordingly, we conclude that section 552.102 is inapplicable. *See Open Records Decision No. 444 (1986).*

Section 552.108 of the Government Code 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). We have reviewed the documents for which you raise this exception. We conclude that the city may withhold from the requestor the documents that appear to relate to the city’s criminal investigation based on section 552.108. We have marked the documents accordingly.

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)*. This exception does not except from disclosure purely factual information that is severable from the opinion portions of the communication. *See id.* We have marked a small portion of one document to which this exception applies.

We also observe that several of the documents are physician-client communications, the release of which is governed by the Medical Practice Act, V.T.C.S. article 4495b, section 5.08. *See Open Records Decision No. 565 (1990)*. 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# 102621

Enclosures: Marked documents

cc: Mr. James Castillo
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(w/o enclosures)