



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 18, 1998

Mr. Jason C. Marshall
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR98-1505

Dear Mr. Marshall:

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# 116402.

The City of Coppell (the "city") received an open records request for "all files, including disciplinary records, pertaining to" a former city police officer. The only records you seek to withhold in response to this request are records of internal affairs investigations into allegations against the named officer.¹ You contend the requested records are excepted from required public disclosure pursuant to sections 552.108 and 552.111 of the Government Code.

We will address the applicability of section 552.111 to these records first. Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993) at 5, this office held that

¹You state that the city will release "basic information" about the investigations contained in the front page of the investigation reports.

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters [Emphasis in original.]

Because the records at issue pertain to personnel matters, and not the formation of policy, none of the records at issue may be withheld pursuant to section 552.111.

You next contend that the internal affairs investigations are excepted from required public disclosure pursuant to sections 552.108(b)(1) and 552.108(b)(2) of the Government Code. Section 552.108(b) of the Government Code, as amended by the Seventy-fifth Legislature, excepts from required public disclosure, in pertinent part,

[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 . . . if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
- (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

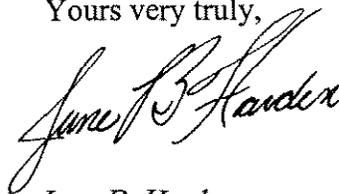
Although one of the purposes of the exception is to protect law enforcement and crime prevention efforts by preventing suspects and criminals from using records in evading detection and capture, *see* Open Records Decision Nos. 133, 127 (1976), we note that the allegations contained in the internal affairs investigations are not of a criminal nature. You have not demonstrated how the release of the information at issue would interfere with law enforcement for purposes of section 552.108(b)(1).² Further, because these internal affairs investigations are administrative, as opposed to criminal, in nature, we do not believe that section 552.108(b)(2) was intended to protect such investigations, which cannot possibly result in conviction or deferred adjudication absent a related criminal investigation. *See also Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to section 552.108 not applicable were no criminal investigation resulted). Consequently, the city may not withhold the internal affairs investigations pursuant to either section 552.108(b)(1) or 552.108(b)(2). The records at issue must be released to the requestor in their entirety, except for any information that would reveal city employees'

²We note that police officers are generally required, as a condition of employment, to fully cooperate in internal affairs investigations.

home address, telephone number, social security number, or information about family members. See Gov't Code §§ 552.024, 552.117.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/mjc

Ref: ID# 116402

Enclosures:

cc: Ms. April Flanary
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(w/o enclosures)