



May 24, 1999

Ms. Bonnie Lee Goldstein
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
3000 Bank One Center
1717 Main Street
Dallas, Texas 75201-4335

OR99-1427

Dear Ms. Goldstein:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124360.

The City of Highland Village (the 'city') which you represent, received a request for information regarding two named police officers. You have supplied information responsive to this request to this office for review. You contend that the subject information is excepted from public disclosure by sections 552.101, 552.103, 552.108, 552.111, 552.117 and 552.119 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common-law right to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You contend that the submitted documents contain financial information, including investment information such as deferred compensation. Financial information concerning an individual is in some cases protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). However, information regarding a financial transaction between an individual and a governmental body is a matter of legitimate public interest not generally protected from public disclosure by common-law privacy. Open Records Decision Nos. 590 at 3 (1991), 523 at 3-4 (1989). For example, the salary of a public employee is not excepted from disclosure. Open Records Decision No. 342 (1982). Further, the doctrine of common-law

privacy does not generally except from disclosure public employee participation in an insurance program that is funded wholly or partially by his or her employer. Open Records Decision Nos. 600 at 9 (1992). Our review of the submitted information revealed nothing that is excepted from disclosure by the common-law right of privacy.

Section 552.103 excepts from disclosure information “relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a politic subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.” Gov’t Code § 552.301. You contend that the subject information relates to three pending criminal prosecutions. However, neither the city, nor any employee of the city, is a party in any of the cited cases. A governmental body may assert the litigation exception for information that a district attorney determines relates to a pending criminal case. Open Records Decision No. 469 (1987). However, here there is no such representation by a district attorney. We therefore conclude that you have not shown how section 552.103 of the Government Code excepts the subject information from disclosure.

Section 552.108, the “law enforcement exception,” provides:

(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An 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 is excepted from [public disclosure] 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 (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert that the investigation file may be withheld under this exception. The investigation to which you refer is apparently an internal affairs rather than a criminal investigation. You relate that no prosecutions have resulted from that investigation. Section 552.108 does not except non-criminal investigations from public disclosure. *See 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). We conclude that you have not demonstrated how release of the subject information would interfere with detection, investigation, or prosecution of crime. The information is therefore not excepted from disclosure by section 552.108.

Section 552.111 of the Government Code excepts from required public disclosure 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 at 5 (1993). 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). An agency's policymaking functions do not encompass internal administrative or personnel matters. Open Records Decision No. 615 at 5-6 (1993). The responsive information you seek to withhold relates to internal personnel and administrative matters rather than to policy making. Consequently, the subject information is not excepted from disclosure by section 552.111 of the Government Code.

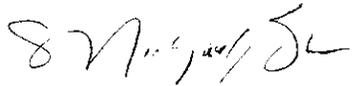
The submitted documents contain information that is excepted from public disclosure by section 552.117 of the Government Code. This section excepts from public disclosure information that relates to a peace officer's home address, home telephone number, or social security number, or that reveals whether the officer has family members. We have marked the information that is subject to section 552.117 of the Government Code. It must not be disclosed. We note that the social security number information that you assert is made confidential by federal law is excepted from disclosure by section 552.117 of the Government Code.

Section 552.119 of the Government Code, with exceptions not applicably here, prohibits the release of photographs that depict police officers. The images of police officers and the information marked as subject to Government Code section 552.117, must be redacted from the responsive information. The balance must be released.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns". The signature is stylized and cursive.

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 124360

encl. Marked documents

cc: Mr. Ernest Tosh
Borah & Tosh
335 W. Main Street
Lewisville, Texas 75057
(w/o enclosures)