



June 23, 1999

Ms. Pamela Liston
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3793

OR99-1753

Dear Ms. Liston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125383.

The Town of Trophy Club (the "town") received a request for the requestor's personnel file and all information regarding the requestor's termination of employment. You state that you have released to the requestor his personnel file. You claim that the requested information concerning the requestor's termination of employment, which consists of an internal affairs investigation, is excepted from disclosure under sections 552.108 and 552.111 of the Government Code. You submit to this office for review the information at issue. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) of the Government Code excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . 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

Gov't Code § 552.108 (a). Generally, a governmental body claiming section 552.108(a)(1) 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 the investigation or prosecution of crime. See Gov't Code §§ 552.108(a)(1), .301(b)(1); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the "file in question in large part contains statements of witnesses and informants," but you have not explained how release of the submitted information would interfere with an ongoing criminal investigation or prosecution.

On the other hand, section 552.108(a)(2) protects information that relates to an investigation that did not result in conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a result other than conviction or deferred adjudication. Because the report of the internal investigation at issue states "no accusation or evidence of any criminal conduct on the part of any person has been alleged or discovered," it appears that there was no investigation of a crime in this case. See *Morales v. Ellen*, 840 S.W. 2d 519 (Tex. App. El Paso 1992, writ denied) (where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, section 552.108 is inapplicable). Thus, you have not met your burden under section 552.108(a)(2). Therefore, you may not withhold the requested information under section 552.108.

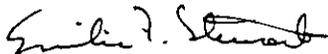
You also contend that the information at issue is protected from disclosure by section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. The submitted documents relate to a personnel matter, *i.e.*, the violation of the town's Department of Safety General Orders/Fire Rescue General Rules. Thus, section 552.111 does not protect the requested information from disclosure.

Although you have not raised section 552.101 of the Government Code as an applicable exception, we must consider whether the information is excepted from required public disclosure pursuant to section 552.101. The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 of the Government Code excepts from required public disclosure information made confidential by statute. Section 19A of V.T.C.S. article 4413(29cc) generally prohibits a person for

whom an examination was conducted (in this case, the town) from disclosing information acquired from a polygraph examination. V.T.C.S. art. 4413(29cc), § 19A(b). However, the town must disclose information acquired from a polygraph examination to the examinee or any other person specifically designated in writing by the examinee. *See id.* § 19A(c)(1), (d). One of the examinees in this case is the requestor, and the requestor is entitled to information acquired from his own polygraph. However, it does not appear that the requestor is entitled to receive information from the polygraph of the other examinee. *See* Open Records Decision No. 562 at 11 (1990). Both polygraph reports and references to polygraph results are confidential under section 19A(b), and, pursuant to section 552.101 of the Government Code, the town must withhold from disclosure polygraph reports and references to polygraph results about the examinee who is not the requestor. The remaining requested information 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,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 125383

Encl: Submitted documents

cc: Mr. James Thomas
1804 Plantation Oak Drive
Trophy Club, Texas 75272
(w/o enclosures)