



November 18, 1999

Ms. J. Middlebrooks
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
501 Police & Courts Building
Dallas, Texas 75201

OR99-3309

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 128906.

The Dallas Police Department (the “department”) received a request for information concerning two internal affairs investigations. You claim that portions of the submitted documents are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

One of the internal affairs investigations pertains to allegations of sexual harassment. You contend that most of the information relating to this investigation should be excepted from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” The common-law right of privacy is incorporated into the Public Information Act by section 552.101. For information to be protected by common-law privacy it must meet the criteria set out 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). The *Industrial Foundation* court held that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the right of common-law privacy to the files of a sexual harassment investigation. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

According to *Ellen*, the requestor, as a member of the public, has a legitimate interest in the statement of the individual accused of misconduct. Therefore, the accused's statement must be released. The requestor is also entitled to the investigating body's summary of the alleged incident, or, if such documents do not exist, other documents that adequately summarize the allegations and findings. *See id.* Because no summary documents have been created in this case, we conclude that the public has a legitimate interest in not only the accused's statement, but also in all of the other submitted documents regarding the investigation. Of course, the identities of the alleged victims and the witnesses must be redacted from the documents before they are released. We have marked a representative sample of the information that must be withheld in accordance with *Ellen*. We have also marked some additional information which implicates one officer's right to privacy. The department must withhold this information from disclosure under section 552.101.

Section 552.108 of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime, if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1), (b)(1). The submitted documents contain cellular telephone numbers which are used "to take care of [officers'] immediate needs in the field." You argue that releasing the cellular telephone numbers to the public will interfere with law enforcement. We agree. Therefore, the department may withhold the telephone numbers from disclosure under section 552.108. *See Open Records Decision Nos. 506 (1988).*

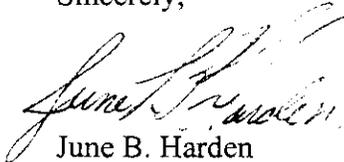
One of the submitted documents is an offense report. You contend that the report is excepted from disclosure under section 552.108. You inform us that the report relates to a pending prosecution for misdemeanor assault. Based upon this representation, we conclude that the release of the offense report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). We note,

however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d 177; Open Records Decision No. 127 (1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. You may withhold the remaining information in the report from disclosure under section 552.108.

Finally, we note that some information in the submitted documents is protected by section 552.117(2). Section 552.117(2) excepts from disclosure peace officers' home addresses, home telephone numbers, social security numbers, and family member information. The department must withhold this information on behalf of its peace officers. We have marked this information accordingly.

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref: ID# 128906

Encl. Marked documents

cc: Mr. Joe Munoz
NBC 5/KXAS-TV
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(w/o enclosures)