



December 22, 1999

Mr. Joe F. Grubbs
Ellis County and District Attorney
Ellis County Courthouse
Waxahachie, Texas 75165-3759

OR99-3746

Dear Mr. Grubbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130506.

The Ellis County Sheriff's Department (the "department"), which you represent, received a request for complaints filed against officers within the past five years, including how the complaints were handled and the results of any investigations into the complaints. You inform us that the requestor clarified the request to include only complaints concerning abuse or harassment by any officer. You explain that the department intends to release all of the requested information except for internal affairs investigative reports regarding the complaints. You claim these reports are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the documents at issue.¹

The Seventy-sixth Legislature amended section 552.022 of the Government Code to make certain information expressly public, and therefore not subject to discretionary exceptions to disclosure. Gov't Code § 552.022. Section 552.022 now states in relevant part:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and are not excepted from required disclosure under this chapter unless they are expressly confidential under other law.

Gov't Code § 552.022. One such category of expressly public information under section 552.022 is "a completed report, audit evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108" Gov't Code § 552.022(a)(1). The documents at issue in this case consist of completed investigative reports made by the department. Therefore, as prescribed by section 552.022, the requested reports must be released to the requestor except as provided by section 552.108 and unless information in the reports is confidential under other law.

The report contains information that is confidential under subsection 552.117(2) of the Government Code. Subsection 552.117(2) provides for the confidentiality of peace officers' home addresses, home telephone numbers, social security numbers, and family member information. We have marked the information that is excepted from disclosure under section 552.117(2). The department must withhold this information from disclosure.

You argue that the reports are confidential under section 552.101 in conjunction with common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses information considered confidential under the common-law right to privacy. Information is protected by the common-law right to privacy 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Because the submitted report pertains to allegations of wrongdoing on the part of police officers employed by the department, the legitimate and substantial public interest in the information outweighs any intimate or embarrassing information that may be contained in the report.² See Open Records Decision No. 444 at 3 (1986). Therefore, the reports are not confidential under common-law privacy as encompassed by section 552.101.

Finally, we consider your argument that the reports are excepted from disclosure under subsections 552.108(a)(1), (a)(2), (b)(1), and (b)(2). These provisions except from required public disclosure:

²We note that we do not find the submitted report to contain highly intimate or embarrassing information.

(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; [or]
- (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

(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 . . . if:

- (1) release of the internal record or notation would interfere with law enforcement or prosecution; [or]
- (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

Gov't Code § 552.108. You state that "most of the complaints did not result in conviction or deferred adjudication," presumably urging the application of sections 552.108(a)(2) and (b)(2). However, neither the submitted report nor your letter indicates that any of the reports pertain to any criminal investigations or prosecutions. Accordingly, subsections 552.108(a)(2) and (b)(2) do not apply to the reports at issue. Moreover, you raise subsections 52.108(a)(1) and (b)(1), arguing that regardless of whether the reports pertain to criminal investigations or internal matters, release of the reports would interfere with law enforcement "because the investigation of internal crimes or wrongdoings could be jeopardized or stifled if law enforcement witnesses know that anything they say will be public information." However, section 552.108 is not applicable to internal affairs investigations where no criminal investigation takes place. *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied). Therefore, we find that in this case, section 552.108 does not provide an exception to the release requirement of section 552.022(a).

In conclusion, the department must release the requested reports under subsection 552.022(a)(1), but must withhold the marked information under section 552.117(2).³

³Because we only reviewed a representative sample of the reports at issue, we note that the department may not release any portions of the reports that are confidential under other law. See Gov't Code §§ 552.022(a), 552.352.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

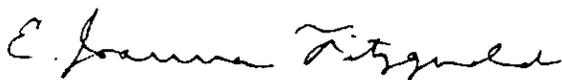
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF\nc

Ref: ID# 130506

Encl: Submitted documents

cc: Ms. Becky Oliver
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(w/o enclosures)