



December 30, 1999

Mr. C. Robert Heath
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR99-3814

Dear Mr. Heath:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130805.

The Austin Community College Police Department (the “department”) received a request for “all materials associated with ACCPD internal Affairs Case 99-160 Racial Harassment.” The department conducted an investigation to determine whether any college police officer violated college policies. You intend to release the final report of this closed case, but claim that the witness statements are excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a) excepts from required disclosure “Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime” in certain circumstances. Section 552.108(b) excepts from required disclosure 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” in certain circumstances. The witness statements requested here appear to concern a personnel matter, not matters related to law enforcement or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.-- El Paso 1992, writ denied) (where no criminal investigation or prosecution results from an internal police investigation of a police officer’s conduct, section 552.108 is inapplicable). *See Open Records Decision No. 579* at 8 (1990). Therefore, the department may not withhold the records under section 552.108.

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,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/jc

Ref: ID# 130805

Encl. Submitted documents

cc: Lieutenant William McCauley
Austin, Community College
Campus Police Department
5930 Middle Fiskville Road
Austin, Texas 78752
(w/o enclosures)