



January 5, 2000

Ms. Jennifer L. Lehmann
Escamilla & Poneck, Inc.
Attorneys at Law
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR2000-0016

Dear Ms. Lehmann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 130830.

The San Antonio Independent School District (the "district") received a request for the audit report submitted by the district's Internal Auditing Division regarding an investigation of the district's publication department. You claim that the information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that section 552.022 of the Government Code expressly provides that the categories of information under section 552.022 "are public information and not excepted from required disclosure under [the Public Information Act] unless they are expressly confidential under other law." One such category of expressly public information under 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." As the audit appears to be completed, it may not be withheld pursuant to the exception for audit working papers, section 552.116. It is expressly made public under section 552.022(a)(1) unless excepted from disclosure under 552.108 or expressly made confidential under other law.

Also, because section 552.111 is a discretionary exception under the Public Information Act and is not "other law" that makes the requested information confidential under 552.022, we need not address your argument under section 552.111.

You assert that the requested information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 of the Government Code states that “information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime” is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). This office has concluded that if an investigation by an administrative agency reveals possible criminal conduct that the agency *intends to report* to the appropriate law enforcement agency, then section 552.108 will apply to the information gathered by the administrative agency if its release would interfere with law enforcement. Attorney General Opinion MW-575 at 1-2 (1982) (construing statutory predecessor) (emphasis added); Open Records Decision No. 493 at 2 (1988). You state that you are “reviewing the information and contemplating whether or not to press criminal charges against the employees involved.” Assuming that you intend to report the criminal conduct to the appropriate law enforcement authority, you may withhold the information under section 552.108. Attorney General Opinion H-917 (1976); Open Records Decision No. 516 (1989).

However, section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). We believe that “basic information” refers to the information held to be public in *Houston Chronicle Publishing Company 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). You must release basic information about the crime to the requestor.

You additionally assert that the requested information is confidential on privacy grounds under sections 552.101 and 552.102 of the Government Code. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, *writ ref’d n.r.e.*), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act.¹ Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685.

¹Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

After reviewing the submitted information, we find that it does not contain any information that is protected by a right of privacy. The public has a legitimate interest in having access to information concerning the job performance of government employees. Open Records Decision No. 444 (1986); *see also* Open Records Decision No. 329 (1982) (reasons for public employee's demotion, dismissal, or resignation are of legitimate public interest). The information concerns employees' work performance and is related to the employees' jobs; therefore, there is a legitimate public interest in the information. Accordingly, we find that section 552.102 does not except the audit report from disclosure.

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.

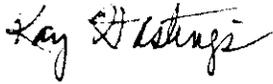
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/KSK/ljp

Ref: ID# 130830

Encl. Submitted documents

cc: Mr. Cruz Flores
2607 Viejita
San Antonio, Texas 78224
(w/o enclosures)