



May 10, 2001

Ms. Judith A. Hunter  
Paralegal  
City of Georgetown  
P.O. Box 409  
Georgetown, Texas 78627-0409

OR2001-1916

Dear Ms. Hunter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147025.

The City of Georgetown (the “city”) received a request for internal affairs investigation results, disciplinary actions, and commendations for a named police officer. You state that you are releasing most of the responsive information. You claim, however, that the submitted information does not constitute public information under the Public Information Act (the “Act”). Alternatively, you claim that the submitted information is excepted from disclosure under section 552.108(b)(1) of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first address your assertion that section 552.022(a)(1) of the Government Code provides that “a *completed* report is public information.” You contend that because the internal affairs investigation being conducted by the city is not complete, it does not constitute public information subject to disclosure under the Act. However, section 552.022 does not serve as an exhaustive list of public information or as an exception to the release of information by negative implication. Rather, it lists eighteen categories of public information that generally may be withheld only if confidential by law or, in the case of completed reports, if excepted under section 552.108 of the Government Code. *See* Gov’t Code § 552.022 (Section 552.022(a) expressly states that it does not limit “the amount or kind of information that is public information under this chapter.”). Moreover, section 552.002 of the Government Code defines public information as “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a

governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” As the submitted information is information collected, assembled, or maintained by the city in connection with the transaction of official business, it is subject to the Act.

Next, we address your assertion that the submitted information is excepted from disclosure under section 552.108(b)(1). Section 552.108 provides, in part:

...

(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 is excepted from the requirements of Section 552.021 if:

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

....

You contend that the internal affairs investigation file should be excepted under section 552.108(b)(1) because the internal affairs documents “are internal records of a law enforcement agency regarding a pending investigation, and their release would interfere with that investigation.” We note, however, that the section 552.108 exception is inapplicable to a police department’s internal administrative investigations that do not involve an investigation of crime. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). Here, the internal investigation file clearly indicates that the alleged behavior investigated was not criminal behavior, but rather an allegation of unprofessional conduct on the part of an officer. Accordingly, we find that section 552.108 does not apply to the internal affairs investigation file and, therefore, the submitted information may not be withheld under section 552.108(b)(1) of the Government Code.

Finally, we note that some of the submitted information must be withheld under section 552.117(2) of the Government Code.<sup>1</sup> Section 552.117(2) excepts from disclosure “information that relates to the home address, home telephone number, or social security number” of a peace officer, or that reveals whether the peace officer has family members. Therefore, the city must withhold the information we have marked under section 552.117(2) of the Government Code.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

To summarize, we conclude that: (1) the submitted information is subject to the Act; (2) section 552.108 does not apply to the internal affairs investigation file and, therefore, the submitted information may not be withheld under section 552.108(b)(1); (3) the city must withhold the information we have marked under section 552.117(2); and (4) the remaining information must be released the requestor.

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).

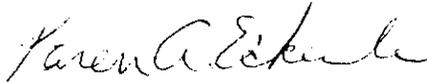
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 147025

Encl.: Marked documents

cc: Mr. Alan Lindsey  
Reporter  
*Williamson County Sun*  
707 Main Street  
Georgetown, Texas 78626  
(w/o enclosures)