



June 14, 2001

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2001-2538

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148439.

The Dallas Police Department (the “department”) received a written request for “all internal complaints filed against [a Dallas police officer] since Nov. 1, 1999.” The department received a second request for “[r]ecords regarding a 2001 public integrity investigation involving” the same Dallas police officer. You state that two investigations resulted from certain allegations against the police officer: an administrative internal affairs investigation and a criminal investigation conducted by the department’s Public Integrity Unit. Although you originally sought to withhold the records of both investigations pursuant to section 552.108(a)(1), you have informed us that the criminal investigation has now been officially closed. Consequently, you now contend that only portions of the internal affairs investigation are excepted from public disclosure pursuant to section 552.101 and 552.117(2) of the Government Code, and that, except for “front page” information, the Public Integrity Unit investigation is protected by section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.*

at 683-85. After reviewing the information in the internal affairs investigation, we agree that much of the information you have marked comes under the protection of common law privacy. We have indicated, however, the portions of the internal affairs investigation that you have marked that are not protected by common law privacy and therefore must be released to the requestor.

The internal affairs investigation also contains information that the department must withhold pursuant to section 552.117(2) of the Government Code. Under section 552.117(2), the department must withhold "information that relates to the home address, home telephone number, or social security number, or that reveals whether" the police officer "has family members." We agree that the information you have marked in the internal affairs investigation is excepted from public disclosure under section 552.117(2). Accordingly, the department must withhold this information.

Finally, you contend that the records of the Public Integrity Unit investigation are excepted from public disclosure pursuant to section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . 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." The information in the Public Integrity Unit file pertains to a criminal investigation conducted by the Public Integrity Unit into certain criminal allegations against the police officer. You state that once the Public Integrity Unit completed its investigation, the matter was referred to the Dallas County District Attorney, who, upon review of the investigation, declined to prosecute the criminal allegations. You have further informed us that the department has officially closed its criminal investigation. We therefore conclude that you have met your burden of demonstrating the applicability of section 552.108(a)(2) and that most of the information from this investigation may be withheld.

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). You inform us that the department has released to the requestor an April 11, 2001 memorandum that summarizes the criminal investigation, but with the redaction of information that identifies a "witness." We agree that the memorandum, as redacted, contains all of the information required to be released under section 552.108(c). *See also 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); Open Records Decision No. 127 (1976).

In summary, the department is required to withhold from the internal affairs investigation all of the information you have marked as coming under the protection of section 552.117(2). The department must also withhold, pursuant to common law right of privacy, those portions

of the internal affairs investigation that you have marked, unless we have indicated otherwise. The remaining information in the internal affairs file must be released to the requestor. Finally, the department is authorized to withhold pursuant to section 552.108(a)(2) the Public Integrity Unit investigation, including the identity of the "witness" contained in the April 11, 2001 memorandum that has previously been released to 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,



Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/RWP/seg

Ref: ID# 148439

Enc. Submitted documents

c: Mr. Jason Sickles
CBS 11
10111 North Central Expressway
Dallas, Texas 75231
(w/o enclosures)