



July 18, 2001

Mr. Wiley B. McAfee
Police Legal Advisor
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR2001-3121

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 149595.

The Irving Police Department (the “department”) received a request for information relating to a background investigation conducted as part of the requestor’s application for employment. You claim that the requested information, which you have submitted as Exhibits C and D, is 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 information.

You first claim that Exhibit D is excepted from disclosure under section 552.108(b) of the Government Code, which provides as follows:

(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;

(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[.]

The purpose of the law enforcement exception is to prevent law enforcement and crime prevention techniques from being readily available to the public at large. *See* Open Records Decision Nos. 133 (1976), 127 (1976); *see also Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied). It is not, however, a catch-all provision that law enforcement agencies may use to protect certain personnel matters from disclosure. Exhibit D contains information gathered during a routine background check of an applicant for employment. The document, which is addressed to the sergeant of personnel development, discusses the applicant's suitability for employment with the department. Furthermore, while you indicate that Exhibit D contains references to criminal behavior, you do not represent that the department has initiated a criminal investigation into this behavior. Based on the foregoing, we conclude that Exhibit D deals only with personnel matters, not law enforcement or prosecution. Consequently, Exhibit D is not excepted under section 552.108(b) of the Government Code.

You next claim that Exhibit D is excepted from disclosure under section 552.101 in conjunction with the doctrine of common law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication 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, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Exhibit D relates *solely* to the qualifications of an applicant for public employment. Since there is legitimate public interest in the qualifications of public employees and the hiring practices of governmental bodies, the department may not withhold Exhibit D from public disclosure based on the common law right to privacy. *See generally* Open Records Decision Nos. 470 (1987) 470 (1987) (public has legitimate interest in job qualifications of public employees), 444 (1986) (concluding that public has obvious interest in having access to information concerning performances of governmental employees, particularly employees who hold positions as sensitive as those held by members of law enforcement), 423 at 2 (1984) (scope of public employee privacy is narrow), 284 (1981) (letters of recommendation not protected by privacy).

You next claim that Exhibit D is protected from disclosure by section 552.101 in conjunction with the informer's privilege. The informer's privilege is well established under Texas case law. *See Aguilar v. State*, 444 S.W.2d 935 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724 (Tex. Crim. App. 1928). The privilege protects the identities of individuals who

report violations of statutes to police, other law enforcement agencies, and certain administrative officials. *See* Open Records Decision No. 279 (1981). For information to come under the protection of the informer's privilege, it must relate to a violation of a criminal or civil statute. *See* Open Records Decision Nos. 515 (1988), 391 (1983). As previously noted, the individual provided this background information as part of the application process. There is no indication that the individual intended to report the behavior for law enforcement purposes or that the department treated it as such. Consequently, the informer's privilege is not applicable in this instance.

Finally, you assert that some of the information in Exhibit C is confidential criminal history record information ("CHRI"). Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, to the extent that Exhibit C contains CHRI obtained from DPS or another criminal justice agency, that information must be withheld from disclosure. The remaining submitted information, however, must be released.¹

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

¹We note that some of the submitted information is confidential by laws intended to protect a person's privacy. Therefore, if the department receives a subsequent request for the submitted documents from someone other than the requestor or her authorized representative, the department should seek another ruling from this office. *See* Gov't Code § 552.023 (providing that person or person's authorized representative has special right of access to information held by governmental body that relates to person and that is protected from disclosure by laws intended to protect that person's privacy interest).

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).

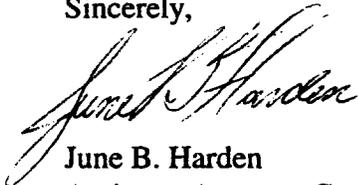
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 149595

Enc. Submitted documents

c: Ms. Andrea Amen
406 Red River Trail #1018
Irving, Texas 75063
(w/o enclosures)