



October 30, 2001

Mr. Kuruvilla Oommen
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2001-4960

Dear Mr. Oommen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154105.

The City of Houston (the "city") received a request for all documents and findings of Office of Inspector General investigations concerning three named city employees. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted Office of Inspector General investigation file is a completed investigation, and normally must be released pursuant to section 552.022(a)(1) of the Government Code. Section 552.022 makes "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" public information unless expressly made confidential under other law or "except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). You claim the submitted information is excepted from disclosure under section 552.108(a)(2) of the Government Code.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. Here, you assert that submitted investigation pertains to a criminal

¹ As the city failed to provide arguments in support of its initial claims under sections 552.101, 552.103, and 552.130, we assume that the city is no longer asserting those exceptions.

investigation that concluded in a result other than conviction or deferred adjudication. Upon review of the submitted information, however, we note that, although the initial complaint alleged assault and violence in the work place, it was determined by the Chief's Command/Legal Services that the complaint did not warrant an investigation by the Criminal Investigation Unit of the Office of Inspector General. Instead, the allegation was investigated by the Employee Relations Section of the Office of Inspector General as a complaint of discrimination and retaliation. Because the submitted information relates to an investigation of discrimination and retaliation that did not result in a criminal investigation, we conclude that the city may not withhold the submitted information under section 552.108(a)(2). *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer).

We note that the submitted documents contain information that may be confidential under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, the city may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. For any employee who timely elected to keep his or her personal information confidential, the city must withhold the employee's home address and telephone number, social security number, and any information that reveals whether the employee has family members. The city may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential. We have marked the type of information that is excepted from disclosure under section 552.117 if the employee has made a timely election under section 552.024.

We further note that information protected under section 552.117 is intended to protect a person's privacy. Therefore, under section 552.023 of the Government Code, a person who is the subject of the information or the person's authorized representative has a special right of access to such information. Accordingly, section 552.023 provides the requestor a special right of access to her home address, home telephone number, and social security number contained in the submitted information.

Finally, we note that the social security numbers we have marked may be confidential even for employees that failed to make a timely election under section 552.024. A social security number may be withheld in some circumstances under section 552.101 in conjunction with

the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security number and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

To summarize: (1) we have marked the type of information that is excepted from disclosure under section 552.117 if the employee has made a timely election under section 552.024; (2) the requestor has a special right of access under section 552.023 to her home address, home telephone number, and social security number; and (3) prior to releasing any social security number, the city should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990. The remaining information must be released.

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 Dept. 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# 154105

Enc: Submitted documents

c: Ms. Sonya Hunter-Reed
5807 Larch Leaf Lane
Richmond, Texas 77469
(w/o enclosures)