



December 7, 2001

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

OR2001-5726

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# 155858.

The Irving Police Department (the "department") received a request for a specific e-mail. You claim that the document at issue is excepted from disclosure under sections 552.108, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you argue that the e-mail is excepted from disclosure under section 552.108(b)(1) 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[.]

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 withhold all matters from public disclosure. The e-mail at issue is a communication from a member of the Irving Citizen's Police Academy Alumni Association (the "association") to a member of the department. You generally assert that the release of e-mail communications from members of the association to the department would

adversely impact the department's interests. However, you do not explain, nor is it apparent from reading the document, how the release of the submitted e-mail would interfere with law enforcement or prosecution. Thus, we conclude that the department may not withhold the requested e-mail under section 552.108(b)(1).

You also claim that the e-mail is excepted from disclosure under section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. The e-mail at issue does not contain the sender's advice, recommendation, or opinion on a department policy matter. Consequently, section 552.111 is not applicable in this instance.

Finally, you argue that the responsive document contains e-mail addresses that are protected from disclosure under section 552.137. The Seventy-seventh Legislature recently added section 552.137 to chapter 552 of the Government Code. Senate Bill 694, as passed May 14, 2001, signed by the Governor May 26, 2001, and made effective immediately, provides in relevant part:

Sec. 552.137. CONFIDENTIALITY OF CERTAIN E-MAIL ADDRESSES.

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Act of May 14, 2001, 77th Leg., R.S., ch. 356, § 1, 2001 Tex. Sess. Law Serv. 614 (Vernon) (to be codified as Gov't Code § 552.137).<sup>1</sup>

Section 552.137 excepts from disclosure an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. We note that the

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<sup>1</sup>House Bill 2589, which also makes certain e-mail addresses confidential, took effect on September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., ch. 545, § 5, 2001 Tex. Sess. Law Serv. 974, 975 (Vernon) (to be codified as Gov't Code § 552.136). The language of section 552.136, as added by House Bill 2589, is identical to that of section 552.137.

e-mail addresses in question are actually contained in the requestor's e-mail that was forwarded to the department, not the responsive e-mail. In his request, the requestor clearly states that he does "not want a copy of my e-mail that was forwarded to you." Consequently, the e-mail addresses are not responsive to the request. Since none of your claimed exceptions apply, we conclude that the department must release the requested e-mail.

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 Texas Building and Procurement 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/sdk

Ref: ID# 155858

Enc. Submitted documents

c: Mr. Paul Jordan  
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(w/o enclosures)