



May 10, 2002

Ms. Julie B. Ross
Karger, Key, Barnes & Springer
300 West Third Street, Suite 1700
Fort Worth, Texas 76102

OR2002-2497

Dear Ms. Ross:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162992.

The City of Coppell (the "city"), which you represent, received a written request for, among other things, the following categories of information:

1. Any and all documents, memos, statements, letters, complaints, and personal notations pertaining to any and all internal investigations . . . and administrative leave durations of [the requestor] during the time of his Coppell employment.

2. Any and all documents, memos, statements, letters, complaints, and personal notations pertaining to any and all internal investigations and administrative leave durations of [another city police officer] during the time of his Coppell employment.

....

12. Any and all documents, statements, memos, letters, complaints, and personal notations, concerning [the requestor] that detail allegations that he signed up to work a security patrol, at an overtime rate and failed to devote his entire time and attention to that duty, for the period of 9-11-01 through 3-3-02.

....

14. Any and all documents, memos, statement, letters, complaints, and personal notations detailing the questionable, concern-producing , or withdrawn actions, demeanor, attitude, or interaction with fellow Coppell employees of [the requestor] for the period of 12-28-01 through 2-8-02.

You have submitted to our office as responsive to these requests records from two internal affairs investigations and state that the city has released some of that information to the requestor.¹ You contend, however, that the remaining submitted documents responsive to the categories notes above are excepted from required public disclosure pursuant to sections 552.101, 552.108, and 552.117 of the Government Code.

We note at the outset that one of the internal affairs investigations, which concerns a sexual harassment complaint, is specifically made subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter *unless they are expressly confidential under other law*:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, *except as provided by Section 552.108[.]* [Emphasis added.]

The submitted sexual harassment investigation is completed. Consequently, the city may withhold these investigation records only to the extent the information contained therein is made confidential under other law or is otherwise protected by section 552.108 of the Government Code. You do not raise section 552.108 for these records. However, because you raise section 552.101, which protects "information considered to be confidential by law," we will consider the applicability of this exception to the records at issue.

Section 552.101 of the Government Code protects information protected by common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common-law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.*

¹ You also state that the city has released all of the other requested categories of information to the requestor.

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Id.* at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In conclusion, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* Based on *Ellen*, a governmental body must withhold the identities of alleged victims and witnesses to alleged sexual harassment as well as any information that would tend to identify a witness or victim.

The submitted information contains some documents that we consider to be analogous to the summary released in *Ellen*, as well as the accused person's statements. The city must release these documents, which we have identified, in accordance with the holding in *Ellen*. However, the city must redact from these documents the information identifying the victim and witnesses as well as the "family member information," which we have marked, that must be withheld pursuant to section 552.117(2) of the Government Code.² The remaining documents contained in the internal affairs report, including individual complainant and witness statements and other supporting documentary evidence, must be withheld in accordance with *Ellen* pursuant to section 552.101 in conjunction with common-law privacy.³

We now address the extent to which the other internal affairs report is excepted from public disclosure pursuant to section 552.108 of the Government Code. Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." You state that this report pertains to a pending criminal investigation of crime. Based on your representation, we agree that the city may

² Section 552.117(1)(B) makes confidential, among other things, family member information of "a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code." Unlike non-peace officer public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

³ Because we resolve this aspect of your request under common-law privacy, we need not address the applicability of the informer's privilege to this information.

withhold the records pertaining to this internal affairs investigation pursuant to section 552.108.⁴

Section 552.108 does not, however, except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). The city therefore must release these types of information in accordance with *Houston Chronicle Publishing Company 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).

In summery, the city must release from the records of the sexual harassment investigation the documents we have identified as constituting an adequate summery of the investigation, but with the redaction of the victim’s and witnesses’ identities and family information protected under section 552.117(2). The city may withhold most of the other internal affairs investigation pursuant to section 552.108(a)(1), but must release all basic information concerning the criminal allegations.

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

⁴ Because we resolve this aspect of your request under section 552.108, we need not address your other arguments for non-disclosure.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,

V.G. Schimmel
V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/sdk

Ref: ID# 162992

Enc: Marked documents

c: Mr. Joel Allen
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Frisco, Texas 75034
(w/o enclosures)