



September 5, 2002

Mr. Edward H. Perry
Assistant City Attorney
City of Dallas
1500 Marilla 7DN
Dallas, Texas 75201

OR2002-4976

Dear Mr. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168175.

The City of Dallas (the "city") received a request for seven categories of information related to the city's Illegal Dump Team and specific instances of alleged illegal dumping. You advise that the city has no documents responsive to category number 6 of the request.¹ You state that you will release some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information, some of which consists of representative samples.²

As section 552.108 of the Government Code is the most inclusive exception you raise, we address it first. You claim that information contained in Exhibits C, E, G, H, J, and portions of the information contained in Exhibit B may be withheld under this exception.

¹The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

² We assume that the "sample" of records submitted to this office is truly representative of those requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). A governmental body that raises section 552.108 must sufficiently explain, if the responsive information does not provide an explanation on its face, how and why section 552.108 is applicable to the information. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform us that the information at issue pertains to ongoing criminal investigations conducted by the city's Department of Code Compliance/Illegal Dump Team. Based on your representation, we conclude that the release of the information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1); *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) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 at 3 (1978). The city may therefore withhold Exhibits C, E, G, H, J, and the information you have highlighted in blue in Exhibit B under section 552.108(a)(1).

You contend that some of the remaining submitted information is excepted from disclosure under section 552.101 in conjunction with the informer's privilege. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas courts have recognized the informer's privilege. See *Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing Wigmore, *Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). The privilege excepts the informer's statement only to the extent necessary to protect that informer's identity. Open Records Decision No. 549 at 5 (1990).

Exhibit K contains information identifying an individual who has made a complaint relating to illegal dumping. You state that the complaint involves a violation of sections 7A-18 of the City Code and section 365.012(a) of the Health and Safety Code. You further state that the complaint was reported to city officials who are responsible for enforcing these laws. Based on your representations and our review of the relevant laws, we conclude that you may withhold the yellow highlighted information identifying the complainant in Exhibit K under section 552.101 in conjunction with the informer's privilege. See Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city's

animal control division is excepted from disclosure by informer's privilege so long as information furnished discloses potential violation of state law).

You further claim that Exhibit K contains information that is excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure "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. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.). An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist.*, 37 S.W.3d at 160; ORD 615 at 4-5.

You claim that Exhibit K contains information consisting of interoffice communications containing advice and recommendations concerning the city's policy on illegal dumping issues. After reviewing the blue highlighted information, we agree that some of it constitutes internal communications consisting of advice, recommendations, and opinions reflecting the policymaking processes of the city. We have marked the information in Exhibit K that may be withheld under section 552.111.

Finally, we address your claim under section 552.117 for certain information contained in Exhibit B. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request 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). Thus, to the extent the current or former employees whose yellow highlighted information is at issue elected under section 552.024, prior to the request, to keep this information confidential, you must withhold it under section 552.117(1) of the Government Code. You may not withhold this information under section 552.117 for the current or former employees to the extent they have not made timely elections under section 552.024. Further, we have marked cellular telephone numbers that are excepted under section 552.117 only if the cellular telephone was purchased and privately owned by the employee and the employee made a timely election under section 552.024. *See* Open Records Decision No. 506 at 5-6 (1988) (predecessor to section 552.117 does not apply to cellular phone numbers paid for by county and intended for use at *work* for county business).

In summary, you may withhold the information in Exhibits C, E, G, H, J, and the blue highlighted information in Exhibit B that relates to ongoing criminal investigations under section 552.108. You may withhold the yellow highlighted information in Exhibit K under section 552.101 and the informer's privilege. You may withhold the information we have marked in Exhibit K under section 552.111. The yellow highlighted information in Exhibit B must be withheld under section 552.117 to the extent that the current or former employees whose information is at issue made a timely election under section 552.024. The cellular telephone numbers we have marked must be withheld under section 552.117 only if such an election was made, and the cellular telephone was purchased and privately owned by the employee. The remaining requested 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 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,



Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 168175

Enc. Submitted documents

c: Mr. Randy Lee Loftis
The Dallas Morning News
508 Young Street
Dallas, Texas 75265
(w/o enclosures)