OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 30, 2003

Ms. April M. Virnig
Taylor Olson Adkins Sralla Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2003-3680

Dear Ms. Virnig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181928.

The City of Lake Worth Police Department (the "department"), which you represent, received a request for "[a] copy of all reprimands and other disciplinary actions, and all documentation associated with all internal investigations" relating to a named former police officer. You state that you have released some of the requested information. You claim that portions of the requested information, which you have submitted to this office for review, are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

You state that the requested information includes records of a criminal investigation conducted by the Benbrook Police Department. You assert that section 552.108(a)(2) excepts this information from required public disclosure. Section 552.108(a)(2) provides as follows:

> (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure} if:
>
> . . .

> (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2). 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.

You contend that section 552.108(a)(2) applies here because, "[a]s the submitted information clearly states, this case has been closed by the Benbrook Police Department with no arrest, conviction, or deferred adjudication." However, section 552.108(a) applies to "[i]nformation held by a law enforcement agency." *See id.* Consequently, the exception applies when the investigating law enforcement entity shows that it has a law enforcement interest in protecting the information. In this case, the criminal investigation was conducted by the Benbrook Police Department, not the department. The department is maintaining this information as part of the officer's personnel file not as the law enforcement agency investigating this matter. Furthermore, you have provided this office no information to show that the Benbrook Police Department has a law enforcement interest in the information at issue. Therefore, we find that the department has not established that section 552.108(a)(2) applies to the information. *See* Open Records Decision No. 423 (1984) (section 552.108 predecessor generally inapplicable to information maintained as part of police officer's personnel records).

You also claim that the information is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. *Industrial Found. v. Texas Indus. Accident Bd.,* 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. *Id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Having reviewed the submitted information, we conclude that none of the information is protected from disclosure by common-law privacy. *See* Open Records Decision Nos. 444 at 4 (1986); 400 at 5 (1983); *see also* Open Records Decision Nos. 423 at 2 (1984) (scope of public employee privacy is narrow); 611 at 1-2 (1992) (domestic violence information not categorically private information, but must be decided on case by case basis). Accordingly,

none of the information may be withheld from the requestor based on section 552.101 in conjunction with common-law privacy.

However, the information includes confidential information that is excepted from disclosure under section 552.117(2) of the Government Code. The department must withhold those portions of the records that reveal the officers' home addresses, home telephone numbers, social security numbers, and whether the officer has family members. The department must also withhold the officer's *former* home addresses and telephone numbers from disclosure. *See* Open Records Decision No. 622 (1994). We have marked the personal information the department must withhold from disclosure under section 552.117(2).

The records also include information that is subject to section 552.130 of the Government Code. Section 552.130 provides in relevant part:

> (a) Information is excepted from the requirement of Section 552.021 if the information relates to:
>
> > (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
> >
> > (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the information covered by section 552.130. We have marked the documents accordingly.

In conclusion, we find that sections 552.101 and 552.108(a)(2) of the Government Code do not apply to the information at issue. Sections 552.117(2) and 552.130 apply to portions of the information. Consequently, the department must withhold the information that is subject to sections 552.117(2) and 552.130 and release the remaining information to the requestor. We have marked the documents accordingly.

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).

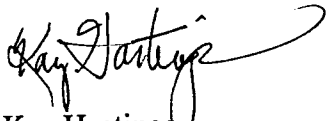
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 181928

Enc: Marked documents

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(w/o enclosures)