



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 28, 2003

Mr. William R. Wepfer
City Attorney
City of Raymondville
418 East Tyler, Suite A
Harlingen, Texas 78550

OR2003-5157

Dear Mr. Wepfer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184993.

The City of Raymondville and the Raymondville Police Department (the "city"), which you represent, each received a written request from an attorney for all records pertaining to the arrest of the requestor's client and any related subsequent investigations. You contend that the requested information is excepted from required disclosure pursuant to sections 552.102 and 552.103 of the Government Code.

We note, however, that the release of the submitted records is governed by section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) 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.

Gov't Code § 552.022(a)(1), (3) (emphasis added). The submitted records consist of completed reports and investigations made public under section 552.022(a)(1). Consequently, the city must release the submitted records unless they are expressly made

confidential under other law.¹ As noted above, you contend that the submitted records are excepted from disclosure pursuant to section 552.103 of the Government Code. Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and is therefore not other law that makes information expressly confidential for purposes of section 552.022(a). *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.); Open Records Decision No. 542 at 4 (1990) (governmental body may waive section 552.103). Thus none of the submitted information may be withheld on the basis of section 552.103. Consequently, the city may withhold the submitted records only to the extent they are made confidential under other law. Because the city is required by law to withhold information coming within the protection of section 552.102 of the Government Code, we will consider the applicability of this exception to the records at issue.

Section 552.102 of the Government Code is specifically designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain 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. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.).

In this instance, the information at issue pertains solely to a former city police officer's actions as a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the type of information at issue here. Consequently, none of the submitted information comes under the protection of section 552.102.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise other exceptions intended to protect information made confidential by law because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. In this regard, we note that some of the submitted records contain information that the city may be required to withhold pursuant to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) protects, *inter alia*, the home address and telephone number of "a peace officer as defined by Article 2.12, Code of Criminal Procedure." Unlike non-peace officer public employees, a peace officer need not

¹ We note that you have not raised section 552.108 for the submitted information. *See* Gov't Code § 552.022(a)(1).

affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988). We have marked the information that the city must withhold pursuant to section 552.117(2), but only if the peace officer is still commissioned.

We also note that some of the submitted information may be excepted from disclosure pursuant to section 552.1175 of the Government Code. Section 552.1175 provides in pertinent part:

(a) This section applies only to:

...

(2) county jailers as defined by Section 1701.001, Occupations Code[.]

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). We have marked the information that may be subject to section 552.1175. However, we note that you do not inform this office, nor does any of the submitted information indicate, whether the county jailer in this instance has elected confidentiality for information about him in accordance with the above-cited subsection 552.1175(b)(1) and (2). If he has, the information that we have marked must be withheld from disclosure in accordance with section 552.1175. Otherwise, we conclude that the city must release this marked information.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CMN/RWP/sdk

Ref: ID# 184993

Enc: Submitted documents

c: Ms. Valerie R. Esparza
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(w/o enclosures)