



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 29, 2003

Ms. Jo-Christy Brown
Brown & Carls, L.L.P.
106 East Sixth Street, Suite 550
Austin, Texas 78701

OR2003-9315

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 193464.

The City of Georgetown (the "city"), which you represent, received a request for "information regarding the internal affairs investigation on [a named individual] or any IA investigation where [the requestor's] name is included in or referenced to." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit information responsive to the portion of the request for internal affairs investigations. We assume the city has released this information to the requestor. If it has not, it must do so at this time to the extent that such internal affairs investigations exist. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You claim that the submitted information is excepted from public disclosure under section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

- (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[.]

In general, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(2), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(2) protects information relating to a concluded criminal investigation that did not result in a conviction or a deferred adjudication.

You indicate that the submitted information relates to internal affairs investigations. We note that section 552.108 generally does not apply to an internal administrative investigation involving law enforcement officers that did not result in a criminal investigation or prosecution. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); Open Records Decision No. 562 at 10 (1990); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution); Open Records Decision No. 350 at 3-4 (1982). You do not inform us, however, and it does not otherwise appear to this office, that the submitted information relates to a criminal investigation. We therefore conclude that the city has not demonstrated that the information at issue is excepted from disclosure under section 552.108. *See* Gov't Code § 552.108(a)(2); *see also Ellen*, 840 S.W.2d at 525-26 (stating that statutory predecessor to section 552.108 was not applicable where no criminal investigation or prosecution of police officer resulted from internal affairs investigation); Open Records Decision No. 350 (1982) (stating that statutory predecessor was not applicable to internal affairs investigation file when no criminal charge against police officer results from investigation). Therefore, the city may not withhold the submitted information under section 552.108 of the Government Code.

You also claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.¹ Information is protected from disclosure under the common-law right to privacy if it (1) contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

In *Morales v. Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. *See Ellen*, 840 S.W.2d at 525. 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. *See id.* The court ordered 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. *See id.* In concluding, however, 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.* Therefore, when there is an adequate summary of an investigation, the summary and any statements of the person under investigation must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victims must still be redacted from the statements.

Based on our review of your arguments and the information at issue, we find that the submitted document entitled "Confidential Investigation Report" constitutes an adequate summary of this sexual harassment investigation. Accordingly, we conclude that the city must withhold the marked identifying information of the alleged victim and witnesses that is contained within this summary pursuant to section 552.101 in conjunction with the common-law right to privacy. However, pursuant to *Ellen*, the city must release the remaining portions of this summary to the requestor, except as provided below.

We note that section 552.117(a)(2) of the Government Code excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members regardless of whether the peace officer made an election under section 552.024 of the Government Code regarding the confidentiality of such information. Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We have marked the information that is protected under section 552.117(2) of the Government Code.

In summary, the city must withhold the marked identifying information of the alleged victim and witnesses that is contained within the summary pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. We have marked the information that is protected under section 552.117(2). The remaining portions of the summary must be released to the requestor.

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,

A handwritten signature in black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/sdk

Ref: ID# 193464

Enc. Submitted documents

c: Mr. Daniel Brown
310 South Austin Avenue
Georgetown, Texas 78626
(w/o enclosures)