



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 17, 2008

Mr. Michael K. Kallas  
Assistant City Attorney  
Boyle & Lowry, L.L.P.  
4201 Wingren, Suite 108  
Irving, Texas 75062-2763

OR2008-14266

Dear Mr. Kallas:

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# 324926.

The Colleyville Police Department (the "department"), which you represent, received a request for (1) several specified police policies and manuals, (2) the dispatch log for May 1, 2008, (3) the "laser calibration for [a named officer] on May 1, 2008," (4) the named officer's and department's traffic stop statistics for 2007 and 2008, and (5) any internal affairs complaints involving the named officer. You claim the submitted internal affairs investigation records are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have submitted information responsive only to the request for internal affairs complaints. To the extent information responsive to all other aspects of the request existed on the date the department received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address the department's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, the governmental body must state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office, within fifteen business days of receiving the request, general written comments stating the reasons why the stated exceptions

apply that would allow the information to be withheld. *See id.* § 552.301(e)(1)(A). Although you raised sections 552.101 and 552.108 of the Government Code by the appropriate deadline, you did not claim an exception under section 552.130 of the Government Code until after the ten-business-day deadline. Furthermore, you did not submit arguments for section 552.108 until after the fifteen-business-day deadline. Thus, we find the department failed to comply with the requirements of section 552.301 with respect to its claims under sections 552.108 and 552.130.

Generally, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *Cf. id.* § 552.302; *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Section 552.108 is discretionary in nature, and serves only to protect a governmental body's interests; as such, it may be waived. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Consequently, the department may not withhold any of the submitted information pursuant to section 552.108 of the Government Code. However, because section 552.130 is a mandatory exception to disclosure, we will consider the applicability of this exception, along with your claims under section 552.101, to the submitted information.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as section 143.089 of the Local Government Code. Section 143.089 provides for the existence of two different types of personnel files relating to a police officer: one that must be maintained as part of the officer's civil service file and another the police department may maintain for its own internal use. *See* Local Gov't Code § 143.089(a), (g). You claim the submitted internal affairs investigation records are excepted from disclosure under section 143.089(g). However, you inform us the City of Colleyville is not a civil service city as defined under chapter 143 of the Local Government Code. We note the provisions of chapter 143 of the Local Government Code only apply to civil service cities. Because the City of Colleyville is not a civil service city, section 143.089 is inapplicable to the submitted internal affairs investigation records.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Information pertaining to the work conduct and job performance

of public employees is subject to a legitimate public interest, and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 405 at 2-3 (1983) (public has interest in manner in which public employee performs job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under common-law right of privacy); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). You claim the submitted internal affairs investigation information is protected by common-law privacy. You have not, however, provided any arguments explaining how common-law privacy applies to the investigation information. Furthermore, although information pertaining to alleged employee misconduct may be embarrassing, such information is of legitimate public interest. *See* Open Records Decision No. 484 a 3-4 (1987) (public's interest in knowing how police departments resolve complaints against police officer ordinarily outweighs officer's privacy interest). Thus, the department may not withhold any part of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You assert the submitted records contain information subject to section 552.130 of the Government Code. This section provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). Thus, the department must withhold the license plate number we have marked in the submitted records under section 552.130 of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

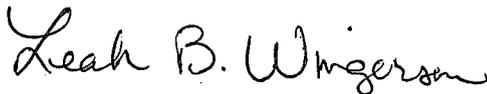
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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 Office of the Attorney General 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. 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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/eeg

Ref: ID# 324926

Enc. Submitted documents

c: Ms. Lori Winter  
3708 Oakbriar Lane  
Colleyville, Texas 76034  
(w/o enclosures)