



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2009

Ms. Catrina Purcell Longoria
Langley & Banack
401 Quarry Street
Eagle Pass, Texas 78852

OR2009-06951

Dear Ms. Longoria:

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# 343839.

The Eagle Pass Police Department (the "department"), which you represent, received a request for information reflecting reprimands, evaluations, awards, and certificates of training for the department's Chief of Police.¹ You state the department has released some information to the requestor. You claim the remaining 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.

You raise section 552.101 of the Government Code for Exhibit E. Section 552.101 of the Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). The types 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. *Id.* at 683. The identity of an alleged victim of sexual harassment is excepted from public disclosure under section 552.101 in conjunction with common-law privacy. *See*

¹You state, and provide documentation showing, you sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

Morales v. Ellen, 840 S.W.2d 519, 525 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate and embarrassing information and public did not have a legitimate interest in which information). Thus, the department must withhold the information we have marked in Exhibit E under section 552.101 in conjunction with common-law privacy.

We next address your argument under section 552.108 of the Government Code, which you raise for Exhibit D. Section 552.108 provides in pertinent part 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:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while section 552.108(b)(1) encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the information at issue “identifies a narcotics agent in charge of the [Drug Enforcement Administration].” However, you have failed to explain how the release of any information in Exhibit D would interfere with a particular pending criminal investigation or prosecution. Additionally, you have not explained how release of the information at issue would interfere with law enforcement or crime prevention. Therefore, you have failed to demonstrate how section 552.108 is applicable. *See Open Records Decision No. 252 at 3 (1980)*. Accordingly, we conclude the department may not withhold any portion Exhibit D under section 552.108 of the Government Code.

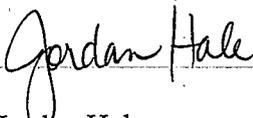
We note some of the remaining information is subject to section 552.117 of the Government Code.² Section 552.117(a)(2) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.³ Gov't Code § 552.117(a)(2). We have marked information in Exhibit E that must be withheld under section 552.117(a)(2) of the Government Code.

In summary, the department must withhold the information we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold the information we have marked in Exhibit E under section 552.117(a)(2) of the Government Code. As you raise no other arguments against disclosure, the remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

Ref: ID# 343839

Enc. Submitted documents

cc: Requestor
(w/o enclosures)