



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 24, 1994

Mr. Mark B. Taylor
City Attorney
City of San Marcos
630 East Hopkins
San Marcos, Texas 78666

OR94-135

Dear Mr. Taylor:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 24193.

The City of San Marcos (the "city") has received a request for information in the possession of the city's police and human resources department. Specifically, the requestor seeks the "[i]nitial background check, by B. Klett [and the] secondary background by T. Nichols." In addition, the requestor seeks "[a]ll daily observation reports and weekly reports by field training officers and field training coordinator." You advise us that the city will make the requested daily observation reports and weekly reports available to the requestor. However, you seek a determination with respect to the remaining information, which you have submitted to us for review. You claim that section 552.108 of the act excepts this information from required public disclosure.

Section 552.108 excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals 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.

Gov't Code § 552.108. When applying section 552.108, this office distinguishes between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation, section

552.108 excepts from disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976). Otherwise, when the "law enforcement" exception is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). When a matter is closed, the names of witnesses may be withheld under certain circumstances. Open Records Decision No. 297 (1981). The names of witnesses and their statements may be withheld if it is determined:

from an examination of the facts of the particular case that disclosure might either subject the witnesses to possible intimidation or harrassment [*sic*] or harm the prospects of future cooperation between witnesses and law enforcement officers.

Open Records Decision No. 252 (1980) at 4.

You have submitted to us for review an internal police department memorandum, an offense report, a court document, and a police officer background investigation report. The internal police department memorandum summarizes a police officer's conduct incident to the arrest reported in the submitted offense report. The background investigation report was compiled as part of a police officer's application for employment with the city. The information provided to the police department for use in both the memorandum and the background investigation report was provided by acquaintances and former employers of the requestor, not "witnesses" as that term has been used in past decisions of this office. *See, e.g.*, Open Records Decision Nos. 297 (investigation of traffic ticket fixing); 252 (1980) (investigation of murder case); 216 (1978) (fire investigation). The persons that you describe as "witnesses" are in fact merely employment and character references. The memorandum and background check are not criminal investigations for purposes of prosecution. We therefore do not agree with your assertion that disclosure of the submitted information would subject "witnesses" to intimidation or harassment or harm the prospects of future cooperation between witnesses and law enforcement officers. Moreover, you have not reasonably explained, nor does the information supply an explanation on its face, how release of the submitted information would unduly interfere with law enforcement. Accordingly, we conclude that the city may not withhold the submitted information under section 552.108 of the act.

We note that certain information contained in the "Arrests, Detentions, and Law Suits," "Marital and Family History," and "Financial Information" sections of the background investigation report implicate the common-law privacy interests of the requestor and his wife. *See Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (holding that information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public); *see also* Open Records Decision No. 373 (1983) at 3-4 (holding that absent showing of special circumstances,

personal financial information about an individual is "intimate or embarrassing" and is of no legitimate concern to the public). Section 552.023 of the act affords the requestor a special right of access to information about himself that is otherwise protected by common-law privacy. *See* Open Records Decision No. 481 (1987) (common-law privacy does not provide a basis for withholding information from its subject). Section 552.023, however, does not afford the requestor a special right of access to private information about his wife. We have marked the information that must be withheld from required public disclosure under section 552.101 of the act, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See* Open Records Decision Nos. 455 (1987) at 3; 325 (1982) at 1 (holding that the attorney general will raise section 552.101 on behalf of a governmental body because the act prohibits the release of confidential information and because its improper release constitutes a misdemeanor). The remaining information, however, must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/GCK/rho

Ref.: ID# 24193

Enclosures: Submitted documents

cc: Mr. Jeffery R. Daugherty
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Lockhart, Texas 78644
(w/o enclosures)