



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 26, 1995

Ms. J. Praba Cinclair  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR95-492

Dear Ms. Cinclair:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32606.

The City of Dallas (the "city") received an open records request for copies of information regarding the employment termination of a police officer. Specifically, the requestor asked for copies of all police department investigations of the officer "and any other officer or citizen involved in the same series of events and investigations" and all published standard operating procedures, as well as any other documents which were relied upon in the department's decision to terminate the officer's employment. You inform us that you have released some of the information requested, however, you maintain that portions of the requested information are excepted from required public disclosure by section 552.101, 552.117(1)(B), and 552.107 of the Government Code. You have submitted for our review copies of the documents which you contend contain information that is excepted from required disclosure. Among the documents submitted for our review are notes, memorandums, polygraph results, and a list of names and addresses.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if there has

not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

The city received the latest request on March 16, 1995, by letter dated March 14, 1995. You requested a decision by this office by letter received March 29, 1995, and dated March 28, 1995. On the basis of these facts, we conclude that you failed to request a decision within the ten-day period provided by section 552.301(a) of the Government Code.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.-- Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. *Hancock*, 797 S.W.2d at 381. Compelling reasons exist when some other source of law makes the information confidential or when the privacy or property interests of third parties are at stake. Open Records Decision No. 150 (1977) at 2.

First we address the documents you have submitted for our review related to polygraph examinations. Included in the records submitted for our review are (1) memorandums ordering police officers to take polygraph examinations; (2) two memorandums which contain the polygraph examiner's opinions, and impressions of the examinations; (3) two polygraph case reports; (4) two statements by the officers examined that they would submit to polygraph examinations; and (5) two completed forms titled Written Authorization to Inspect Polygraph Records. Additionally, attached to the polygraph information is a copy of a statement of facts from an examining trial.

You contend that section 552.101 of the Government Code excepts these documents from required disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Additionally, a governmental body must withhold information from required public disclosure under section 552.101 if the information meets the criteria articulated for common-law privacy in *Industrial Foundation v. Texas Industrial Accident Board*, 540

S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing and it is of no legitimate concern to the public.

Section 19A of the Polygraph Examiners Act provides that, generally, "information acquired from" a polygraph examiner's report is confidential. See V.T.C.S. art. 4413(29cc), § 19A. This office addressed the types of related information that may be protected by section 19A in Open Records Decision No. 430 (1985) at 4. This office concluded that "the written/printed results of the full examination, including all questions asked and those marked as control questions" are protected from required disclosure. *Id.* This office also concluded that information which reveals the location and cost of the examination is not protected by section 19A. The only information protected by section 19A was that which resulted from the examination. Under section 552.101, in conjunction with section 19A of article 4413(29cc), the polygraph results and the portions of the memorandums addressing those results must be withheld from public disclosure. Open Records Decision No. 562 (1990) at 11. In reviewing the records submitted, we note two references to polygraph examinations in a document titled Control Number 94-218F. These references relate to the polygraph examination results and must be withheld from disclosure. We have marked the documents to reflect the portions of the submitted records that the city must withhold from the requestor. The other records related to the polygraph examinations that do not discuss the results of the examinations must be released to the requestor. Open Records Decision No. 430 (1985) at 5.

We next address the two page document you submit for our review that reflects the names, addresses, and telephone numbers of witnesses. You state that this document contains the home addresses and home telephone numbers of government employees. You contend that section 552.117(1)(B) of the Government Code and article 2.12 of the Code of Criminal Procedure except from required disclosure the home addresses and home telephone numbers of the government employees. While you raise this exception, you have not designated which of the individuals listed are police officers or government employees.

Section 552.117(1)(B) provides that

the home address or home telephone number of a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code [are excepted from required disclosure].

Since section 552.117(1)(B) excepts from required disclosure the home addresses and telephone numbers of peace officers, these must be withheld from disclosure if any are included in the memorandum listing witnesses. Open Records Decision Nos. 532 (1989),

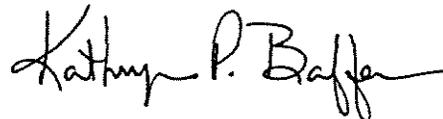
530 (1989). Also, the home addresses and telephone numbers of the police officers being investigated must be withheld from required disclosure in accordance with section 552.117(1)(B). We have marked their addresses listed on the documents you have submitted for our review titled Disciplinary Hearing Notes. Additionally, if any of the individuals listed on the memorandum that lists witnesses are government employees who have properly requested that their home addresses and telephone numbers be withheld from public disclosure in accordance with section 552.024 of the Government Code, then that information must also be withheld from disclosure pursuant to section 552.117. The remainder of the list of names and addresses is not protected by section 552.117 and must be released to the requestor.

Finally, we address the remaining submitted documents which include (1) disciplinary hearing notes, (2) a personnel complaint against police employees, and (3) a document titled Control Number 94-218F. You contend that section 552.107 of the Government Code, which addresses the attorney-client privilege, excepts from disclosure information in these submitted documents.

The fact that information might have been excepted from disclosure under section 552.107(1) had you made a timely request for a ruling does not constitute a compelling reason to withhold the information. *See* Open Records Decision No. 630 (1994) (section 552.107(1) waived if not timely raised). Except for the mention of the polygraph tests and the officers' home addresses, which we have marked showing the portions which must be withheld, we conclude that you have not shown a compelling reason why these documents should be withheld. Consequently, you must release these documents to the requestor.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kathryn P. Baffes  
Assistant Attorney General  
Open Government Section

KPB/LRD/rho

Ref: ID# 32606

Enclosures: Marked documents

cc: Mr. Kenny R. Kirby  
General Counsel  
Texas Conference of Police and Sheriffs  
1414 North Washington  
Dallas, Texas 75204  
(w/o enclosures)