



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Ms. Detra G. Hill
Assistant City Attorney
Supervisor, Criminal Law and Police Division
Office of the City Attorney
501 Police and Courts Building
Dallas, Texas 75201

OR95-886

Dear Ms. Hill:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 34664.

The Dallas Police Department (the "department") received a request for "any and all information pertaining to the denial of [a certain individual's] application with the . . . department." You assert that portions of the requested information are excepted from required public disclosure based on sections 552.101 and 552.111 of the Government Code, and because you say the applicant waived her section 552.102 "special right of access" to portions of the information.

As for your argument that the requestor has waived her section 552.102 right to the requested information, we note that governmental bodies may not enter into agreements to keep information confidential. See Open Records Decision No. 514 (1988). Moreover, section 552.102, which by its terms applies to "employees," does not create a "special right of access." Rather, section 552.102 means that, except for information unavailable to the public because of an employee's right to privacy, the availability of records to employees is identical to their availability to the public. See Open Records Decision No. 332 (1982).¹

¹While the records may be available to the requestor, some parts of those records are protected from disclosure to the public in order to protect the requestor's right to privacy.

Section 552.101 excepts from required public disclosure information that is confidential by law. You raise this exception in regard to mental health records that you have marked as exhibits F, G, and H. Chapter 611 of the Health and Safety Code contains provisions pertaining to access to mental health records. We believe, therefore, that access to the requested mental health records is controlled by these provisions, rather than the Open Records Act. *Cf.* Open Records Decision No. 598 (1991)

Section 552.111 of the Government Code excepts from required public disclosure:

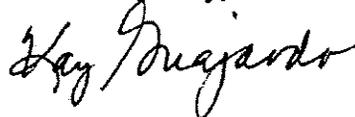
An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). We conclude that section 552.111 does not apply to any of the requested information as it does not concern the department's policymaking process. *See* Open Records Decision Nos. 615 (1993), 283 (1981).

Finally, we have marked some private criminal history information that the department must not release. *See* Gov't Code § 552.101.

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,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 34664

Enclosures: Marked documents

cc: Ms. Billie Jean Warta
2517 Independence
Mesquite, Texas 75150
(w/o enclosures)