



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 5, 1995

Ms. Karen L. Horner  
Assistant City Attorney  
City of Baytown  
P.O. Box 424  
Baytown, Texas 77522-0424

OR95-1040

Dear Ms. Horner:

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# 33594.

The City of Baytown received a request for information concerning certain meetings held regarding complaints against a city employee. You contend that the requested information is excepted from required public disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

The documents submitted for our review concern routine internal administrative and personnel matters. Accordingly, you may not withhold the requested information under section 552.111 of the Government Code.

Section 552.107(1) excepts from disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Information may be withheld under section 552.107(1) only to the extent that it documents confidences of a governmental representative to its attorney or reveals the attorney's legal advice and opinions. Open Records Decision Nos. 589 (1991), 574 (1990).

You claim that the information submitted as Exhibit "G" "were created during a meeting with Ignacio Ramirez, Sr., City Attorney, in which he was offering legal advice to his client, the City of Baytown." However, only the 4/5/95 notes indicate that the city attorney was present at the meeting. The information designated as the notes for 4/5/95 may be withheld under section 552.107. You do not explain how the remaining information implicates the attorney-client privilege nor does the information support such an assumption. Accordingly, the remaining information may not be withheld under section 552.107 of the Government Code.

Finally, you claim that section 552.101 of the Government Code as it incorporates the informer's privilege and common-law privacy except the requested information from disclosure. We note, however, that once the identity of the informer is known to the subject of the communication, the informer's privilege is no longer applicable. Open Records Decision No. 202 (1978) at 2. It is clear from the submitted documents that the subject of the communication knows the identity of the complainant. You may not withhold any of the requested information under the informer's privilege.

For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must be highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and the information must not be of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)).

We have reviewed the submitted information. The documents do not contain highly intimate or embarrassing facts. Moreover, the performance of a public employee while on duty is of legitimate public interest. See Open Records Decision No. 470 (1987).<sup>1</sup> Except for the information withheld under section 552.107 as discussed above, the requested information must be released.

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<sup>1</sup>Although you raise *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), we conclude that the information at issue here is distinguishable from that case. *Ellen* concerned allegations of sexual harassment in the work place. None of the documents submitted for our review concern sexual harassment.

We are resolving this matter with an 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 should 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,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/LBC/rho

Ref: ID# 33594

Enclosures: Submitted documents

cc: Mr. Weylon Robinson  
City Fire Department  
Division Station 5, C-Shift  
City of Baytown  
P.O. Box 424  
Baytown, Texas 77522-0424  
(w/o enclosures)