



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 19, 1997

Mr. Patrick S. Dohoney
Assistant District Attorney
401 W. Belknap
Fort Worth, Texas 76196-0201

OR97-1146

Dear Mr. Dohoney:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 35126

The Tarrant County (the "county") received a request for all Sheriff's records concerning a former employee. The requestor is an attorney who represents the former employee. The employee has also provided Tarrant County with a signed release authorizing the disclosure of his records to this requestor. You claim, however, that some of the requested material is excepted from required public disclosure by sections 552.101 and 552.111 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Initially, you express concern that the request for information is overly broad and that you cannot determine with specificity the documents sought by the requestor. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the county must make a good-faith effort to relate the request to information in the district's possession and must help the requestor to clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 (1990) at 8. In this case, you state that you have asked the requestor to clarify his request for information. You have also identified at least three documents that are responsive to the request and now seek a ruling on the disclosure of those documents. We will address your arguments.

You first claim that a psychological report of the former employee is excepted from disclosure by section 552.101. Chapter 611 of the Health and Safety Code provides for the confidentiality of mental health records created or maintained by a mental health professional. Section 611.002 provides in relevant part as follows:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. The report at issue appears to fall within the purview of the statute. We do not believe, however, that you may withhold the report from this requestor based on section 611.002. The requestor in this instance represents the subject of the report and has provided the county with an effective release. Health & Safety Code §§ 611.004(d), .0045(a) (providing patient access to patient's own records); *see* Open Records Decision No. 565 (1990) at 3 (upon written consent of subject, mental health records must be released). Furthermore, we do not believe that you may withhold the record based on a right of privacy. Gov't Code § 552.023(a) (person has right of access to information that relates to that person and is protected from disclosure by laws intended to protect that person's privacy interests); Open Records Decision No. 565 (1990) at 3. Under the circumstances presented to this office, therefore, we find that you must release the report to this requestor.

You next claim that a background investigation report and a hiring recommendation sheet may be withheld pursuant to section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues.

Open Records Decision No. 615 (1993) at 5-6. The documents in this case merely relate to a routine personnel matter. Section 552.111, therefore, does not except these records from required public disclosure. Additionally, as the requestor represents the subject of the documents, the records are not excepted by a right of privacy in this situation. Gov't Code § 552.023(a). Consequently, you must release the requested documents to this requestor.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 35126

Enclosures: Submitted documents

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(w/o enclosures)

