



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 23, 1997

Mr. Cameron Reynolds
Assistant City Attorney
City of College Station
P.O. Box 9960
College Station, Texas 77842-9960

OR97-1206

Dear Mr. Reynolds:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106512.

The City of College Station (the "city") received requests for a police department manual and internal affairs files concerning two police officers. The requestor also asked for the redacted portion of an August 15, 1984 memorandum that the city had provided the requestor. You submitted to this office the August 15, 1984 memorandum and a transcript of an interview, both of which you assert are protected from disclosure pursuant to section 552.101 of the Government Code. You also submitted to this office a portion of the police department manual, which you contend is excepted from disclosure pursuant to section 552.108 of the Government Code. It is our understanding that you have already released the other documents requested and that the submitted documents are the only records at issue.

You assert that the redacted portion of the memorandum is protected from disclosure on the basis of the named police officer's common-law privacy.¹ Information is excepted from disclosure under common-law privacy if it is (1) highly intimate or embarrassing to a reasonable person, and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.).

¹Since the requestor has agreed that the city may redact the other party's identity from the memorandum, that person's common-law privacy interests do not appear to be at issue.

You contend that the portion of the memorandum at issue is protected from disclosure because it “references highly intimate material which involves highly embarrassing, offensive and unprofessional conduct in the workplace.” You assert that the redacted portion of the memorandum is similar to the type of information held to be protected from disclosure on the basis of common-law privacy in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). In that case, the court addressed the applicability of the common-law privacy doctrine to certain investigation documents concerning allegations of sexual harassment. *Id.* Your April 16, 1997 letter to this office makes clear that the memorandum at issue here does not relate to a claim of sexual harassment.²

The redacted portion of the memorandum deals with the actions of public employees in the workplace and the reasons why a police officer’s employment was terminated. We note that the court in *Ellen* found a public interest in release of information providing the substance of allegations made against the public employee and the reasons for his resignation. *Id.* at 526. The redacted portion of the memorandum provides the substance of why the police officer was terminated and details the behavior of certain public employees while in the workplace. There is a legitimate public interest in how a public servant conducts himself or herself while on-duty and how he or she performs job functions. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees), 423 (1984) at 2 (scope of public employee privacy is narrow). The redacted portion of the memorandum, de-identified as to the other party per the request letter, must be released.

You also assert that the interview is excepted from disclosure on the basis of common-law privacy. The interview appears to concern actions by certain police officers while on-duty and another police officer’s off-duty conduct, including allegations of assault. Information pertaining to work-related matters is public, as discussed previously. In Open Records Decision No. 484 (1987) at 6, this office determined that descriptions of certain off-duty matters involving police officers implicated protected privacy interests. However, certain off-duty incidents involving police officers, such as allegations of assault, were found to be of legitimate public interest. *Id.* We have reviewed the interview at issue and conclude that it is not excepted from disclosure on the basis of common-law privacy.

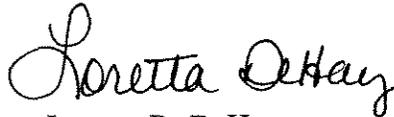
You submitted to this office a portion of a police department manual that you assert is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime” and

²We note that even if the situation involved allegations of sexual harassment, since the *Ellen* court held that the public possesses a legitimate interest in full disclosure of the facts surrounding employee discipline in this type of situation, we believe that there would be a legitimate public interest in the identity of a public employee accused of sexual harassment in the workplace. *Id.* at 525.

"[a]n 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; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We agree that the submitted portion of the police department manual is excepted from disclosure pursuant to section 552.108.

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,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RHS/ghg

Ref.: ID# 106512

Enclosures: Submitted documents

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(w/o enclosures)

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