



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1997

Ms. Trudi Dill
Deputy City Attorney
City of Temple
Municipal Building
Temple, Texas 76501

OR97-1281

Dear Ms. Dill:

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# 106134.

The City of Temple (the "city") received a request for copies of "employment applications, promotions, awards, training, reprimands, complaints, disciplinary actions, qualifications, educational background and other information" related to two city police officers and a former, non-officer employee of the city. You assert that the information is excepted from disclosure pursuant to sections 552.027, 552.101, 552.103, 552.108 and 552.117 of the Government Code. We have considered your arguments and have reviewed the information submitted.¹

Section 552.027 of the Government Code provides:

- (a) A governmental body is not required to accept or comply with a request for information from an individual who is imprisoned or confined in a correctional facility.

¹In reaching our conclusion here, we assume that the "representative samples" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b) Subsection (a) does not prohibit a governmental body from disclosing to an individual described by that subsection information held by a governmental body pertaining to that individual.

(c) In this section, "correctional facility" has the meaning assigned by Section 1.07(a), Penal Code.²

Gov't Code § 552.027 (as added by Acts 1995, 74th Leg., ch. 302, § 1) (footnote added).

By enacting section 552.027, the legislature intended to prevent inmates from using information obtained through the Open Records Act "to file bogus income tax returns on correctional officers, harass nurses at their home addresses, and send mail to the homes of Texas Department of Criminal Justice employees." Tex. Sen. Criminal Justice Comm., Bill Analysis, Tex. H.B. 949, 74th Leg., R.S. (1995) (quoting from "Background") (available through the Senate Research Center). After careful consideration and given the stated purpose of section 552.027, we do not believe that the legislature intended to prevent an attorney, who is subject to rules of professional responsibility, from requesting information on behalf of an inmate whom he is representing. Accordingly, we conclude that section 552.027 does not relieve a governmental body of its obligation to accept and comply with an open records request from an attorney who is representing an inmate.

Section 552.301 of the Government code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth day after the date of receiving the written request. The city received the written request for information on February 27, 1997. You did not request a decision from this office until March 13, 1997, more than ten days after the requestor's written request. Therefore, we conclude that the city failed to meet its ten-day deadline for requesting an opinion from this office.

²Section 1.07(a)(14) of the Penal Code provides:

"Correctional facility" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

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 (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); Gov't Code § 552.302. The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. Consequently, we conclude that you may not rely upon sections 552.103 or 552.108 to withhold the requested information.

Section 552.117(2) requires that the city withhold its peace officers' home addresses, telephone numbers, and social security numbers, and information that reveals whether the peace officer has family members. Section 552.117(1) of the Government Code requires that the department withhold its employees' and former employees' home addresses, telephone numbers, and social security numbers, and information that reveals whether the employee or former employee has family members, but only to the extent that the employees and former employees have elected to keep this information confidential in compliance with section 552.024. *See* Open Records Decision No. 530 (1989) (employee must make election prior to receipt of open records request). We agree that to the extent such information relating to the subject police officers appears in the records requested, you must withhold such information from disclosure. As you state the former employee has made the election to keep such information confidential under section 552.024, such information related to this former employee must also be withheld.

You also assert that the name of "the complainant" must be withheld pursuant to section 552.101 as information made confidential by law. It is not clear whether you are referring to a complainant involved in the offense for which the requestor's client is incarcerated, or a complaint, if any, related to an officer who is the subject of this request. We note, however, that information normally found on the front page of an offense report is generally considered public, *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), including the identity and description of a complainant, Open Records Decision No. 127 (1976). Further, this office has ruled that the name of a complainant against a police officer, the name of the officer, and the disposition of the matter are not excepted by privacy. Open Records Decision No. 208 (1978).

Finally, we note the last page of the documents submitted contain references to a report involving sexual assault. Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under section 552.101, information may be withheld on the basis of common-law privacy. The doctrine of common-law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records

Decision No. 339 (1982), we concluded that a sexual assault victim has a common-law privacy interest which prevents disclosure of information that would identify her/him. *See also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Thus, the city must withhold any information that would identify the victim of sexual assault.

To conclude, the city must release all of the requested information except that relating a victim of sexual assault, and to the subject police officers' and former employee's home addresses, telephone numbers, and social security numbers, and information that reveals whether the officers or former employee has family members.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/ch

Ref.: ID# 106134

Enclosures: Submitted documents

cc: Ms. Lynn L. Libersky
106 W. Central Ave.
Belton, Texas 76513
(w/o enclosures)