



April 28, 1999

Ms. Elaine Hengen
Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79901-1196

OR99-1167

Dear Ms. Hengen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123624.

The El Paso Police Department (the "department") received a request for police department records that include a police report about a fight at a high school and an internal affairs report concerning an allegation of excessive force. You state that the front page information concerning the police report and also a videotape and press release have been made available to the requestor. You also explain that the "personnel incident report form" in its entirety and a letter from the department concerning the allegation have been released. You assert that the remaining portions of the police incident report and the internal affairs report are protected from disclosure under sections 552.108(a)(2) and 552.108(b)(2) of the Government Code. You also argue that sections 552.101 and 552.130 of the Government Code protect marked portions of the internal affairs report.

Section 552.108(a)(2) excepts from disclosure information held by a law enforcement agency that deal with the detection, investigation, or prosecution of crime in relation to an investigation that concluded in a result other than conviction or deferred adjudication. It is our understanding that the criminal investigation concluded in a result other than conviction or deferred adjudication. Thus, we agree that the remaining portion of the police complaint report 97-042200 is protected from disclosure under section 552.108(a)(2).¹

You assert that the internal affairs file about the complaint of excessive force is protected from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2)

¹We note that Section 58.007(c) of the Family Code applies to juvenile law enforcement records concerning conduct occurring on or after September 1, 1997, that are maintained by law enforcement agencies. The conduct that lead to this investigation occurred under the prior law, which was interpreted by Open Records Decision No. 644 (1996).

protects the internal records of a law enforcement agency that are maintained for the agency or prosecutor's internal use in matters relating to law enforcement or prosecution in relation to an investigation that concluded in a result other than conviction or deferred adjudication. You contend that the "records in the Internal Affairs file that directly relate to the criminal investigation" may be withheld from disclosure under section 552.108(b)(2) of the Government Code. We note that you submitted representative samples of the records at issue so we are unsure which portions of the complaint report file 97-042200 are duplicated in the internal affairs file at issue. We agree that witness statements and other information from the criminal complaint file that is duplicated in the internal affairs is also protected from disclosure.

We note, however, that the internal affairs file generally is a personnel investigation dealing with standards of behavior rather than a criminal investigation report. Thus, except for the records which duplicate the criminal investigation report, the remaining portion of this internal investigation report is public unless confidential otherwise. As you have marked some information as otherwise confidential, we address your markings and other arguments.

You contend that a driver's license number is confidential under section 552.130 of the Government Code. We agree that the marked information is confidential under section 552.130. You also assert that information about an attempted suicide is protected from disclosure under section 552.101 of the Government Code on the basis of common-law privacy. We agree that the marked personally identifying information concerning a suicide attempt or threat of suicide is confidential. Open Records Decision No. 262 (1980). You also marked as confidential a medical report in the file. We conclude that the report is confidential and that access is governed by section 5.08 of the Medical Practice Act, article 4495b of Vernon's Texas Civil Statutes. Open Records Decision No. 598 (1991).

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 123624

encl. Submitted documents

cc: Mr. Luis Elias Lopez
619 Arizona Avenue
El Paso, Texas 79902
(w/o enclosures)