



June 1, 1999

Mr. Mark T. Sokolow
City Attorney
City of Port Arthur
P.O. Box 1089
Port Arthur, Texas 77641-1089

OR99-1494

Dear Mr. Sokolow:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 124519.

The City of Port Arthur (the "city") received requests for information related to two police department employees. The responsive information consists of grievances filed against Police Chief M.E. Gorris and an offense report implicating a police officer. You have submitted this information to our office for review. You contend that the subject information is excepted from public disclosure by sections 552.102, 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). For information to be protected from public disclosure under the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1(1992). We have marked the submitted information to indicate that which is excepted from disclosure by common-law privacy. This information is confidential and must not be released.

Section 552.108 of the Government Code protects certain information related to law enforcement. It reads:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
 - (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or
 - (3) it is information that:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.
- (b) An 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 is excepted from the requirements of Section 552.021 if:
- (1) release of the internal record or notation would interfere with law enforcement or prosecution;
 - (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or
 - (3) the internal record or notation:
 - (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or
 - (B) reflects the mental impressions or legal reasoning of an attorney representing the state.
- (c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

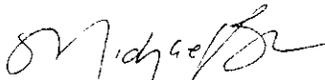
We note that the subject grievances do not relate to criminal investigations or prosecutions and that you have not submitted argument that they are internal documents excepted under

any provision of this statute. Therefore, this information may not be withheld under section 552.108 of the government Code. You relate that the subject arrest report relates to a pending criminal investigation. Based on this representation we conclude that you may withhold this report, with the exception of "front page" information, under section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g 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*,; Open Records Decision No. 127 (1976). Information normally found on the front page of an offense report is "basic information" not excepted by this statute. *Id.*; Gov't Code § 552.108(c). You must release the type of information that is considered to be front page offense report information, including a detailed description of the offense and arrest, even if this information is not actually located on the front page of the offense report. Although section 552.108(a)(1) authorizes you to withhold information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

You also raise section 552.111 of the Government Code. This section excepts from required public disclosure interagency and intra-agency memoranda and letters, to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). An agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues Open Records Decision No. 615 at 5-6 (1993). Neither the grievances nor the incident report contain or consist of advice, opinion, or recommendation intended for use in the entity's policymaking process. None of the subject information is excepted by section 552.111 of the Government Code.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 124519

Encl. Submitted documents

cc: Ms. Amy Upshaw
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(w/o enclosures)