



September 20, 1999

Ms. Jeri Yenne
Criminal District Attorney
Brazoria County
111 E. Locust, Suite 408A
Angleton, Texas 77515

OR99-2619

Dear Ms. Yenne:

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# 127494.

The Brazoria County Sheriff's Department (the "department") received a request for "[c]opies of any and all documentation contained in Officer Michael Cordero's personnel file." You contend that several of the requested documents are excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.108 of the Government Code. We assume that you have provided the requestor with copies of the remaining documents from Officer Cordero's personnel file.

We note that the requestor faxed his request to the Brazoria County Treasurer (the "treasurer"). The treasurer then forwarded the request to the department on June 14, 1999. We did not receive your request for a decision until June 29, 1999,¹ more than ten business days after the department received the request from the treasurer. Ordinarily, the failure to request an attorney general decision within ten business days would result in the presumption that the requested information is open to the public. Gov't Code § 552.302. In this case, however, the department's receipt of the request from the treasurer did not trigger the ten business day deadline. *See* Gov't Code § 552.201(b) (each elected county officer is the

¹Please note that section 552.308 of the Government Code, commonly referred to as the mailbox rule, applies to documents sent by first class United States mail, but not to documents sent by Federal Express. Therefore, the date on which you requested a decision from this office is June 29, 1999, the day we received your correspondence, not June 28, 1999, the day you sent the request by Federal Express.

officer for public information of the information created or received by that county officer's office), .301(a) (a written request, which triggers the ten business day deadline, includes a request made in writing that is sent to the officer for public information, or the officer's designee, by facsimile transmission); Open Records Letter No. 98-0999 (1999) (the Dallas County Sheriff's Office was not obligated to answer a request directed to the Dallas County Treasurer and forwarded to the Dallas County Sheriff's Office). Therefore, the timing of your request for a decision is not an issue.

First, you contend that the several of the submitted documents are confidential by statute. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 19A(b) of article 4413(29cc) of Vernon's Texas Civil Statutes which as follows:

Except as provided by Subsection (d) of this section, a person for whom a polygraph examination is conducted or an employee of the person may not disclose to another person information acquired from the examination.

Both polygraph reports and references to polygraph results are confidential under section 19A(b), and the department must withhold such information from disclosure pursuant to section 552.101. We have marked the protected information accordingly.

Next, you contend that portions of the submitted documents are protected by a right to privacy. As stated previously, section 552.101 excepts from disclosure information considered to be confidential by law. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

For information to be protected from public disclosure by the common-law right to privacy, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and (2) it is not of legitimate concern to the public. *Id.* at 685. We have consistently held that the public has a legitimate interest in the job performance of public employees. See Open Records Decision Nos. 473 (1987), 470 (1987). Therefore, most of the information in the submitted documents is not protected by privacy. We have, however, marked two phrases that are protected by the common-law right to privacy. The department must withhold this marked information from disclosure under sections 552.101 and 552.102 based on the common-law right to privacy.

Section 552.107(1) protects information coming within the attorney-client privilege. In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences communicated to the attorney. *See* Open Records Decision No. 574 (1990). Accordingly, these two classes of information are the only information that may be withheld pursuant to the attorney-client privilege. None of the information in the submitted documents is excepted from disclosure under section 552.107.

You argue that all of the submitted documents should be excepted from disclosure under section 552.108 which excepts from disclosure certain law enforcement records. Section 552.108 is not applicable to internal affairs investigations where no criminal investigation is undertaken. *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied). The documents at issue relate to two internal affairs investigations. The documents indicate that the department did not pursue these investigations as criminal investigations, but rather as personnel investigations. Therefore, the documents are not excepted from disclosure under section 552.108.

Finally, we note that some of the information in the submitted documents is excepted from disclosure under section 552.117(2) which provides for the confidentiality of peace officers' home addresses, home telephone numbers, social security numbers, and family member information. We have marked the information that is excepted from disclosure under section 552.117(2). The department must withhold this information from disclosure.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 127494

Encl. Marked documents

cc: Mr. Jeff Branscome
308 Woodstream Circle
Friendswood, Texas 77546
(w/o enclosures)