



October 26, 1999

Ms. Kimberley Mickelson
Olson & Olson
Three Allen Center
Suite 3485
333 Clay Street
Houston, Texas 77002

OR99-3024

Dear Ms. Mickelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128508.

The City of Friendswood (the "city"), which you represent, received a request for "all documents concerning the Internal Affairs investigation of Officer Barry Yodzis." (Emphasis in original.) You have provided the requestor with some of the responsive information. You explain that, for complaint numbers 3-7, you have released the disposition sheets, but that you have no additional information for those files. The Public Information Act does not require a governmental body to make available information which does not exist. Open Records Decision No. 362 (1983). However, you contend that some of the remaining requested information is excepted from disclosure under section 552.111 of the Government Code.

First, you explain that the city needed to clarify the requestor's May 19, 1999 request for information. Section 552.222 of the Government Code permits a governmental body to ask the requestor to clarify or narrow the scope of the request. Section 552.222(b) provides:

If what information is requested is unclear to the governmental body, the governmental body may ask the requestor to clarify the request. If a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed, but the governmental body may not inquire into the purpose for which information will be used.

Although section 552.222 allows the city to ask the requestor to clarify his request, section 552.222 does not relieve the city from seeking a timely request for a decision from this office

or relieve the city of its duty to comply with the request. You explain that the city received the requestor's clarification on July 19, 1999. However, this office did not receive the city's request for a decision until August 9, 1999, more than ten business days after the city's receipt of the written request for information. Consequently, you failed to request a decision within the ten business days required by section 552.301(a) of the Government Code. We further note that you have not asserted any exceptions to withhold information submitted as Tabs D-G as required by section 552.301.

Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general and state the exceptions that apply within ten business days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision and state the exceptions that apply within ten business 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 Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. Gov't Code § 552.302.

You urge that "the Chief of Police is concerned for the safety, morale, and well-being of his officers if unfounded 'complaints' or internal affairs investigation files are determined to be open records and is concerned about what malicious use might be made of them." The Public Information Act prohibits a governmental body from inquiring into the purpose for which the information will be used. Gov't Code § 552.222(a). You further contend that the requested information should be withheld in this case because the requestor "has previously displayed an aggressive, harassing, and intimidating demeanor to City staff, including employees within the Police Department." The existence of special circumstances, such as an imminent threat of physical danger as opposed to a generalized and speculative fear of harassment or retribution, may make public disclosure of information an unwarranted invasion of personal privacy. *See* Open Records Decision No. 169 (1977). We do not believe that you have shown the existence of such special circumstances in this instance. We conclude that you have not shown compelling reasons as to why the information should not be made public. Thus, except for the information discussed below, you must release the submitted information. *See* Open Records Decision No. 473 (1987) (failure to meet ten-day deadline waived protection of section 552.111).

The submitted information includes the home telephone number of a peace officer. Section 552.117(2) excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members. "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure. The city must withhold a peace officer's home telephone number under section 552.117(2). Furthermore, in Open Records Decision No. 506 at 5 (1988), this office stated that one

purpose of section 552.117 is to protect public officials and employees from being harassed while at home. Thus, the peace officer's pager number must also be withheld from disclosure.¹

Lastly, the submitted information also includes information excepted from public disclosure under section 552.130. Section 552.130 excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Accordingly, you must withhold the information excepted by section 552.130, such as drivers' license numbers, license plate numbers, and VIN numbers.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp

Ref: ID# 128508

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

¹For purposes of granting section 552.117, we assume that the pager was purchased and privately owned by the peace officer. See Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.108 protects from required public disclosure cellular mobile phone numbers assigned to public and private vehicles used by county officials and employees with specific law enforcement responsibilities; predecessor to section 552.117 does not apply to cellular mobile phone numbers paid for by county and intended for use at *work* for county business; different considerations apply if employee pays for purchase and installation of and calls to and from mobile phone in his private vehicle and simply seeks reimbursement for calls made on county business).