



August 10, 2000

Ms. Regina T. Grimes
Office of the General Counsel
Texas Department of Criminal Justice
P.O. Box 13401, Capitol Station
Austin, Texas 78711

OR2000-3041

Dear Ms. Grimes:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137896.

The Texas Department of Criminal Justice (the "department") received a request for information relating to a named department parole supervisor. You claim that the information is excepted from disclosure under sections 552.103, 552.108, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Section 552.103 requires concrete evidence that litigation may ensue. To demonstrate that litigation is reasonably anticipated, the department must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 at 5 (1989). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

You inform this office that the department reasonably anticipates litigation because, among other things, department parole officers, including the requestor, have filed a complaint

with the Department of Labor alleging violations of overtime wage laws, as well as intimidation and harassment by parole supervisors.¹ The department also submitted a copy of the complaint that has subsequently been filed by the Department of Labor in this matter. However, after reviewing the complaint and the submitted information, we conclude that the department has not demonstrated that the submitted documents relate to the anticipated litigation concerning overtime wage law violations. Therefore, you may not withhold the requested information pursuant to section 552.103.

The department also claims that the submitted information is excepted from required public disclosure under section 552.108 of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. See Gov't Code §§ 552.108, .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You explain that release of the requested documents would interfere with law enforcement, and explain that this matter is pending. However, the documents themselves reveal that the department's role in this matter was as an investigator of violations of department policy; the criminal investigation of this matter appears to have been pursued, and referred for prosecution, by the Dallas Police Department. Further, you have not demonstrated that any other provision of section 552.108 is applicable. See, e.g., Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident), 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Thus, you may not withhold the information under section 552.108.

The department also claims exception under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body.

¹Additionally, you report that the requestor has filed a complaint against the subject of this request in the Dallas Municipal Court. However, section 552.103 applies only when the requested information relates to pending or anticipated litigation to which the *governmental body* is a party. Gov't Code § 552.103.

An agency's policymaking functions do not encompass internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. Open Records Decision No. 615 at 5-6 (1993); *see also Garland v. Dallas Morning News*, 43 Tex. Sup. Ct. J. 303 (Jan. 13, 2000) (personnel communications not relating to agency's policymaking not excepted from public disclosure pursuant to section 552.111). An agency's policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 (1995). In addition, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 at 4-5 (1993). If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld under section 552.111. Open Records Decision No. 313 (1982).

In the instant case, the information at issue consists entirely of administrative and personnel matters. As such, section 552.111 is inapplicable to the submitted information; thus, you may not withhold the information under section 552.111.

Therefore, we find that the majority of the submitted information must be released. However, section 552.117(3) of the Government Code requires that you withhold the home address, telephone number, social security number, or family member information, of a department employee. Thus, the department must withhold all section 552.117 information from disclosure. We have marked examples of the types of information that must be withheld under section 552.117. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

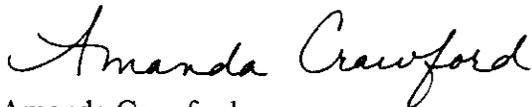
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 137896

Encl. Submitted documents

cc: Ms. Lakerrie Owens, District Parole Officer
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Dallas, Texas 75235
(w/o enclosures)