



March 14, 2001

Mr. Charles M. Allen, II
Richardson Police Department
P.O. Box 831078
Richardson, Texas 75083-1078

OR2001-1006

Dear Mr. Allen:

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# 145023.

The Richardson Police Department (the "department") received a request for "the name[s] of all Richardson Police Officers and their identification numbers and/or badge numbers." You indicate that you have released a responsive roster of the department's personnel, after first redacting information relating to civilian personnel, peace officers no longer employed by the department, and officers presently employed by the department who are assigned to the Special Investigation Section (the "SIS"). You claim that responsive information relating to the officers who are assigned to the SIS is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

First, we address your assertion that information relating to civilian employees or to former employees is not responsive to the request for information. We agree that the language of the request does not encompass either civilian personnel or peace officers no longer associated with the department.

Next, we note that ordinarily the names of a governmental body's employees and officers are subject to required public disclosure under section 552.022 of the Government Code. Section 552.022 provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, *the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:*

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2) (emphasis added). Thus, section 552.022(a)(2) requires the release of the requested information, which consists of the names and badge numbers of police officers, unless that information is expressly confidential under other law. Section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived; as such, it does not constitute other law for purposes of section 552.022(a)(2). *See* Open Records Decision No. 177 (1977).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by common law privacy.¹ *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Ordinarily, information is protected by common law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, *and* (2) the information is not of legitimate concern to the public. *Id.* at 685. However, information also may be withheld under section 552.101 in conjunction with common law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* You inform this office that the "officers employed in SIS work undercover." You assert that "to reveal the information sought about them would reduce their ability to function in the investigation and detection of crime and could present a threat of physical danger to the individual officers." Because of your handling of the requested information and the particular circumstances present in this request for a decision, we conclude that in this instance only the names and badge numbers of officers assigned to the SIS are confidential under section 552.101 in conjunction with common law privacy and must be withheld from the requestor. *See* ORD 169.

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

¹Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because chapter 552 of the Government Code prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 344 at 2 (1982).

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).

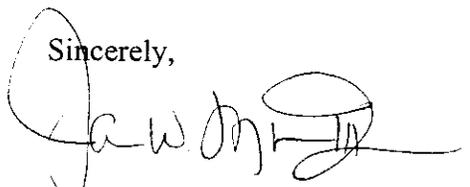
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,

A handwritten signature in black ink, appearing to read "James W. Morris, II". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, II
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 145023

Encl: Submitted documents

cc: Mr. Fred Slice
2406 Diamond Oaks
Dallas, Texas 75044
(w/o enclosures)