



November 27, 2001

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
2014 Main Street, Room 501
Dallas, Texas 75201

OR2001-5483

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155320.

The City of Dallas Police Department (the "department") received a request for all investigations of a named officer, including investigations into outside work performed by the officer. You indicate that you will release some of the requested information. However, you claim that some of the requested information is excepted from disclosure under section 552.111 of the Government Code and section 58.007 of the Family Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your claim that a portion of the responsive information is confidential under section 58.007 of the Family Code. You indicate that an internal affairs investigation of the named officer from 1992 contains information relating to juvenile criminal conduct. Section 58.007 of the Family Code, which provides that "law enforcement records and files concerning a child . . . may not be disclosed to the public," does not apply to records relating to conduct that occurred before September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, 1997 Tex. Sess. Law Serv. 4179, 4187; Open Records Decision No. 644 (1996). However, former section 51.14(d) of the Family Code provides for the confidentiality of juvenile law enforcement records relating to conduct that occurred before January 1, 1996. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Because the records at issue concern, in part, juvenile conduct that occurred before January 1, 1996, we find that the records are confidential under former section 51.14 of the Family Code and must be withheld under section 552.101 of the Government Code.¹

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

You also contend that a portion of the responsive information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 provides that “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from [required public disclosure].” This section encompasses the deliberative process privilege. *City of Garland v. Dallas Morning News*, 22 S.W.3d 351, 360 (Tex. 2000). The deliberative process privilege, as incorporated into the Public Information Act by section 552.111, protects from disclosure interagency and intra-agency communications consisting of advice, opinion, or recommendations on policymaking matters of a governmental body. *See id.*; Open Records Decision No. 615 at 5 (1993). An agency’s policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. Additionally, the deliberative process privilege does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.*, 37 S.W.3d 152 (Tex. App.--Austin 2001, no pet.); ORD 615 at 4-5.

You seek to withhold under section 552.111 several intra-agency memoranda. While we believe that some of the information in the memoranda relates solely to routine personnel matters and not the department’s policymaking functions, we agree that a portion of the submitted information relates to the department’s broader personnel policy mission. *See* Open Records Decision Nos. 631 (1995), 615 (1993). We have marked the portions of the submitted information that reflect advice, opinion, or recommendations concerning the department’s policy mission. You may withhold this information under section 552.111 of the Government Code and the deliberative process privilege.

In summary, you must withhold a portion of the submitted information, which we have marked, under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. You may withhold a portion of the submitted information that we have marked under section 552.111 of the Government Code. You must release the remainder of the submitted information.

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).

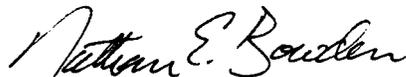
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Tex. Dep't of Pub. 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 Texas Building and Procurement 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,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 155320

Enc: Submitted documents

c: Ms. T. L. Williams
23 East Creek
Grand Prairie, Texas 75052
(w/o enclosures)