



February 1, 2002

Mr. David M. Berman  
Nichols, Jackson, Dillard, Hager & Smith, LLP  
500 North Akard, Suite 1800  
Dallas, Texas 75201

OR2002-0477

Dear Mr. Berman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158424.

The City of Lake Dallas (the "city"), which you represent, received a request for copies of all documents relevant to internal investigations involving a specified person. You claim that portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.108 of the Government Code provides in pertinent part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

....

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in a conviction or deferred adjudication . . . .

Gov't Code § 552.108(b)(2). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state that the submitted information relates to an investigation that did not result in conviction or deferred adjudication. However, you also state that “[n]o criminal investigations or prosecutions are pending and none are anticipated as a result of the internal affairs investigation.” In addition, based on our review of the information, it does not appear that the internal affairs investigation of the specified city police department officer involved an investigation of crime. We note that section 552.108 is inapplicable to a police department’s internal administrative investigation that does not result in a criminal investigation or prosecution of crime. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied). Because you do not otherwise explain how the information relates to a criminal investigation or prosecution, we conclude that the city may not withhold any portion of the information from disclosure pursuant to section 552.108 of the Government Code.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.<sup>1</sup> We note that criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) (“Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given.”), (2) (“No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself.”). Section 411.083 provides that any CHRI maintained by the Department of Public Safety (“DPS”) is confidential. *See* Gov’t Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *See id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). The definition of CHRI does not include driving history record information maintained by the department under Subchapter C of Chapter 521 of the Transportation Code. Accordingly, the city must withhold from disclosure the CHRI that we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. *See id.*; *see also* Gov’t Code § 411.106(b), .082(2) (defining criminal history record information).

We note that a portion of the submitted information constituting the results of a polygraph examination is encompassed by section 1703.306 of the Occupations Code. Pursuant to section 1703.306, information acquired from a polygraph examination may not be disclosed, unless it falls into one of that section’s narrow exceptions. Section 1703.306 provides in part:

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

Occ. Code § 1703.306. It appears from our review of the submitted information that the requestor was the person examined by the polygraph examiner. Since the requestor was the examinee, the results of the polygraph examination can be disclosed to him. *See* Occ. Code § 1703.306(a)(1). Accordingly, we conclude that this portion of the submitted information is not excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 1703.306 of the Occupations Code.

We also note that portions of the submitted information pertain to an investigation of a sexual harassment complaint. Section 552.101 also encompasses information protected from disclosure under the common-law right to privacy. Information is protected from disclosure under the common-law right to privacy 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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. *See Ellen*, 840 S.W.2d at 525. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *See id.* The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *See id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Although information relating to an investigation of a sexual harassment claim involving a public employee may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow); *see also Ellen*, 840 S.W.2d at 525. However, the identifying information of victims and witnesses to alleged sexual harassment is protected by the doctrine of common-law privacy. *See Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied). Accordingly, we conclude that the city must withhold from disclosure the identifying information of victims and witnesses to the alleged sexual harassment that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that portions of the submitted information contain Texas motor vehicle information that must be withheld from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure 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. *See* Gov't Code § 552.130. Accordingly, we conclude that the city must withhold from disclosure the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code.

In summary, the city must withhold from disclosure the CHRI that we have marked pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The city must withhold from disclosure the identifying information of victims and witnesses to alleged sexual harassment that we have marked pursuant to section 552.101 in conjunction with the common-law right to privacy. The city must withhold from disclosure the Texas motor vehicle information that we have marked pursuant to section 552.130 of the Government Code. The city must release the remaining information 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).

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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 158424

Enc. Marked documents

cc: Mr. James A. Conley  
4625 Larner  
The Colony, Texas 75056  
(w/o enclosures)