



March 13, 2002

Mr. Wiley B. McAfee  
Police Legal Adviser  
City of Irving Police Department  
P.O. Box 152288  
Irving, Texas 75015-2288

OR2002-1205

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159901.

The Irving Police Department (the "department") received a request for three categories of information, paraphrased as follows:

1. Any additional correspondence Mr. McAfee wrote to the OAG regarding ID# 155858 that resulted in the ruling OR2001-5726 aside from his correspondence dated October 2, 2001.
2. A copy of all the e-mail addresses for employees of the department.
3. A copy of one photograph of a named individual in the possession of the department.

You state that the department will release information responsive to category 1 of the request. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted to this office by the requestor. Gov't Code §552.304.

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially you argue that e-mail addresses of departmental employees are excepted from disclosure under section 552.108(b)(1) of the Government Code, which provides as follows:

(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 the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

The purpose of the law enforcement exception is to prevent law enforcement and crime prevention techniques from being readily available to the public at large. *See Open Records Decision Nos. 133 (1976), 127 (1976); see also Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied). It is not, however, a catch-all provision that law enforcement agencies may use to withhold all matters from public disclosure.

You contend that if the information in Exhibit C is released, it would allow a member of the public to send unwanted or unauthorized e-mails to the department, “which could result in overloading the system and even stopping critical messages from getting to” departmental personnel. You generally assert that the release of e-mail addresses of employees of the department would adversely impact the department’s interests. We have carefully considered your arguments and reviewed the submitted information. We find that you have not demonstrated that the release of the e-mail addresses would interfere with law enforcement or prosecution of crime. Furthermore, as is the case with a governmental body’s street and mailing address, it is difficult to imagine more public information than a public employee’s e-mail address. After all, a governmental body pays for and provides a public employee’s e-mail address for the purpose of communicating with the public. Thus, we conclude that the department may not withhold the requested e-mail addresses under section 552.108(b)(1).

You next contend that the information contained in Exhibit D is excepted from disclosure under sections 552.101 and 552.102. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

Information is protected by the common-law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977); see also Open Records Decision No. 611 at 1 (1992). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Employee privacy under section 552.102 is significantly narrower than common-law privacy under section 552.101, however, because of the greater public interest in the disclosure of information relating to public employees. See Open Records Decision Nos. 470 (1987), 444 (1986), 423 (1984). Generally, section 552.102 protects only that information that reveals "intimate details of a highly personal nature." See Open Records Decision No. 315 (1982).

You argue that the individual depicted in the photograph in Exhibit D is "concerned about her safety" because of repeated requests for information about her from the requestor. This office has held that information may be withheld from disclosure under section 552.101 in conjunction with the common-law right to 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.* In this case we find that you have not demonstrated an imminent physical danger that would constitute such "special circumstances." Thus, based on our careful review of your arguments and the submitted information, we conclude that you may not withhold the requested information under section 552.101 or 552.102 in conjunction with the common-law right to privacy. As you raise no other exceptions with respect to the photograph, this information must be released to the requestor.

In summary, all of the requested 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).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 159901

Enc. Submitted documents

c: Mr. Paul Jordan  
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(w/o enclosures)