



March 28, 2002

Ms. Angela K. Washington
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-2020

OR2002-1533

Dear Ms. Washington:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 160474.

The Rowlett Police Department (the “department”), which you represent, received a request for information regarding a personnel complaint filed against a named peace officer. You state that you have made two responsive documents available to the requestor. You claim, however, that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.111, 552.117, and 552.130 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information consists of a completed investigation and therefore falls within the scope of section 552.022 of the Government Code. Section 552.022 makes “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body” public information unless expressly made confidential under other law or “except as provided by [s]ection 552.108[.]” Gov’t Code § 552.022(a)(1).

¹ As you did not submit to this office written comments stating the reasons why sections 552.103 and 552.111 would allow the information to be withheld, we find that you have waived these exceptions. *See* Gov’t Code §§ 552.301, .302. Further, as you did not submit to this office written comments stating the reasons why sections 552.101, 552.102, and 552.130 would allow the information to be withheld, we assume that you are no longer asserting these exceptions to disclosure.

You claim that the requested information is excepted from disclosure under section 552.108(a)(2) of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication.

You state that the complaint that resulted in the internal affairs investigation included an allegation that the named peace officer assaulted the requestor. However, you also indicate that the investigation concluded that this allegation was unfounded. Thus, the investigation did not support any criminal allegations. Because the submitted information relates to an internal affairs investigation of employee misconduct that did not result in a criminal investigation, we conclude that the department may not withhold the submitted information under section 552.108. *See Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.—El Paso 1992, writ denied) (section 552.108 not applicable where no criminal investigation or prosecution of police officer resulted from investigation of allegation of sexual harassment); Open Records Decision No. 350 (1982) (predecessor provision of section 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer).

You also argue that witness information contained within the internal affairs investigation documents should be withheld from disclosure. You contend that the release of such information “might either (1) subject the witnesses to possible intimidation or harassment[,] or (2) harm the prospects of future cooperation by the witnesses.” This office has held that information may be withheld from disclosure under section 552.101 of the Government Code in conjunction with the common-law right to privacy upon a showing of certain “special circumstances.”² *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, we conclude that you may not withhold witness information in the internal affairs documents under section 552.101 in conjunction with the common-law right to privacy.

We note, however, that the submitted documents contain information that must be withheld under section 552.117 of the Government Code. Section 552.117(2) excepts from public disclosure information that reveals a peace officer’s home address, home telephone number,

²Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

social security number, and whether the officer has family members.³ We have marked the information in the submitted documents that must be withheld under section 552.117(2). The remaining information must be released.

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.

³ "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 160474

Enc: Submitted documents

c: Mr. Lawrence W. Bradford
3004 Bouvier Street
Rowlett, Texas 75088
(w/o enclosures)