



July 3, 2002

Mr. Hugh Coleman
Assistant District Attorney
Denton County
127 North Woodrow Lane
Denton, Texas 76205-6325

OR2002-3639

Dear Mr. Coleman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165264.

The Denton County Sheriff's Office (the "sheriff") received two requests for information on a named individual. The first request was for the complete contents of the individual's personnel file. The second request was for all documents pertaining to internal affairs investigations on the individual. You state that you have provided information responsive to the first request to the satisfaction of the requestor. However, you contend that the information responsive to the second request is excepted from required public disclosure pursuant to section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in relevant 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:

...

¹Although you also raised sections 552.101 and 552.103 of the Government Code, you have not explained how these exceptions apply to the information at issue. Accordingly, we do not address the applicability of these two exceptions. See Gov't Code §§ 552.301(e)(1)(A), .302.

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

Section 552.108(b)(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(b)(2) must demonstrate that the requested information relates to a criminal matter that has concluded in a final result other than a conviction or deferred adjudication. You contend the submitted documents are excepted from required public disclosure under section 552.108(b)(2) because the documents “refer to an investigation which was not completed and did not result in a conviction or deferred adjudication.”

It is apparent to this office that the submitted records were created for the sole purpose of conducting an internal affairs investigation. Because internal affairs investigations are administrative, as opposed to criminal, in nature section 552.108 is generally inapplicable to such investigations, unless they are conducted in conjunction with a criminal investigation. *See also Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied) (predecessor statute to Gov't Code § 552.108 not applicable where no criminal investigation resulted); Open Records Decision No. 350 (1982) (predecessor provision of Gov't Code § 552.108 not applicable to IAD investigation file when no criminal charge against officer results from investigation of complaint against police officer). Because you have not demonstrated that the submitted records were created in conjunction with a criminal investigation, we conclude that the submitted records are not excepted from public disclosure under section 552.108(b)(2). Consequently, these records must be released in their entirety.

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

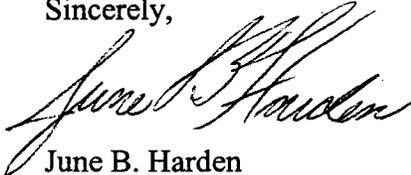
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/sdk

Ref: ID# 165264

Enc: Submitted documents

c: Mr. Reese Dunklin
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)