



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 5, 2009

Ms. Rebecca Griffin
Buenger & Associates
3203 Robinson Drive
Waco, Texas 76706

OR2009-01539

Dear Ms. Griffin:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 334393.

The Hewitt Police Department (the "department"), which you represent, received a request for information relating to a former officer of the department, including his personnel file and records of any investigations relating to his termination. You state that some of the requested information has been released. You claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with the decision in *Garrity v. New Jersey*, 385 U.S. 493 (1967). In *Garrity*, certain officers made incriminating statements during an investigation by the Attorney General of the State of New Jersey under the threat of a forfeiture-of-office statute. *See id.* at 494-95. In subsequent criminal proceedings, the lower court admitted some of the statements into evidence, holding that the officers gave the

¹Although you also initially raised sections 552.107(1) and 552.111 of the Government Code, you have submitted no arguments in support of the applicability of those exceptions. Therefore, this decision does not address sections 552.107 and 552.111. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must submit written comments stating why claimed exceptions apply to information at issue).

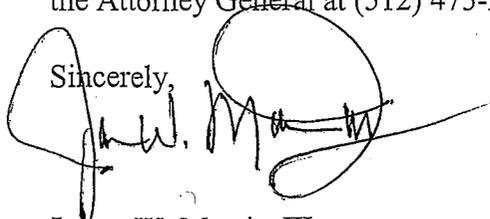
statements voluntarily. *Id.* at 495 n.2. Ultimately, the United States Supreme Court held that self-incriminating statements obtained under a threat of job forfeiture and subsequently used in criminal proceedings violated the officers' Fifth Amendment privilege against self-incrimination. *Id.* at 500.

You seek to withhold statements provided by officers of the department in connection with an internal investigation and references to their statements in the final investigation report. You contend that the statements were given with the understanding, based on *Garrity*, that they would be kept confidential and not be released without the authorization of the officer who provided the statement. Having considered your arguments, we find that *Garrity* is not applicable in this instance. In *Garrity*, the issue was whether the officers' statements could be used as evidence in a criminal prosecution. *See id.* at 495. Here, the question is whether the information at issue must be released in response to a request for information under the Act. We note that information is not confidential under the Act simply because the party that provided the information anticipated or requested that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976); *see also* Attorney General Opinion JM-672 (1987) (governmental body cannot overrule or repeal provisions of Act by agreement or contract). We therefore conclude that the department may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of the decision in *Garrity*. As the department claims no other exception to disclosure, the submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", written over a circular stamp or mark.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 334393

Enc: Submitted documents

c: Requestor
(w/o enclosures)