



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL
ATTORNEY GENERAL

October 20, 1975

Honorable Thomas S. Bishop
Adjutant General
P. O. Box 5218
Austin, Texas 78763

Open Records Decision No. 115

Re: Availability under the Open
Records Act of file of investi-
gation at which requestor testi-
fied.

Dear General Bishop:

You have requested our decision as to the availability to an individual under the Open Records Act, article 6252-17a, V.T.C.S., of the file of an investigation at which the individual testified. The requestor is a former employee of the Garland Air Guard Station of the Texas Air National Guard. In 1973, the Adjutant General conducted an investigation concerning the time and attendance records of another employee superior in rank to the requestor. The requestor was one of the two persons who had been authorized to certify the time and attendance records at issue, and he was among those who gave testimony to the Assistant Inspector General regarding the investigation. Several months later, he furnished a supplemental written statement. Shortly thereafter, the requestor resigned his position.

In 1975, the requestor unsuccessfully applied for another position at Hensley Field in Dallas. On the basis of his belief that the file relating to his prior employment contains derogatory information, the requestor seeks to obtain the entire file relating to the investigation.

The Open Records Act makes public "all information collected, assembled, or maintained by governmental bodies pursuant to law or ordinance or in connection with the transaction of official business," with certain specified exceptions. Section 3(a)(2) excepts

Information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; provided, however, that all information in personnel files of an individual employee within a governmental body is to be made available to that individual employee or his designated representative as is public information under this Act.

It is clear that the requestor may obtain copies of his own testimony to the Assistant Inspector General and his subsequent written statement. As we held in Open Records Decision No. 31 (1974), the proviso to section 3(a)(2) "should be read broadly to include all information relevant to the individual's employment relationship." As to the remainder of the record of the investigation, however, we believe that it is excepted from disclosure by section 3(a)(2). Most of the testimony, as well as the report of the Assistant Inspector General, relate to the allegations against the other employee.

The disclosure of much of this information would, without the consent of the affected employee, constitute a clearly unwarranted invasion of the personal privacy of that individual. Furthermore, we find as a matter of fact that the file of the investigation contains no information which could in any way be considered derogatory to the requestor. See Open Records Decision No. 86 (1975). The few references to the requestor which appear in the testimony of the other witnesses, and in the report of the Assistant Inspector General, furnish no information about the requestor which is not discernible from his own statement and oral testimony.

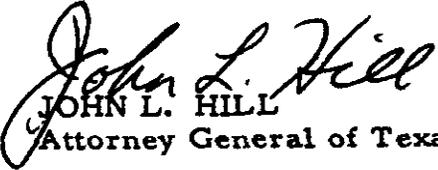
We need not decide whether federal law pertaining to access to information is applicable here, but even if it were, we believe the result would be the same. "The National Guard, while something of a hybrid under both state and federal control, is basically a state organization." Mela v. Callaway, 378 F. Supp. 25, 28 (S. D. N. Y. 1974). The investigation in question was conducted under the authority of the Adjutant General, and the files thereof are in his possession pursuant to state statute, article 5781, V. T. C. S. We have found no federal statute or regulation which deals specifically with investigatory files in the possession of state National Guard commanders.

Furthermore, in language almost precisely the same as that found in section 3(a)(2) of the Texas Open Records Act, the federal Freedom of Information Act exempts from public disclosure information in "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. . . ." 5U.S.C.A. § 552(b)(6). See Rose v. Department of Air Force, 495 F.2d 261 (2d Cir. 1974) (case summaries of service academy honor code adjudications exempt from disclosure); Vaughn v. Rosen, 383 F. Supp. 1049, 1055 (D. C. 1974) (employee performance evaluations exempt). The federal Privacy Act of 1974 entitles an individual to access to "his record or to any information pertaining to him which is contained in the system" of records held by a federal agency. 5U.S.C.A. § 553 (d)(1). See also 5U.S.C.A. § 553 (k)(2), (5), and (7). We believe that if federal law were applicable, these provisions would require disclosure of the requestor's own statements to him, and would exempt disclosure of the balance of the investigatory file because of the privacy interest of the other employee.

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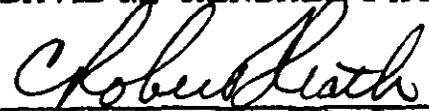
In summary, it is our decision that the Adjutant General should make available to the requestor copies of his own oral and written statements regarding the investigation, but that all other information contained in the investigatory files is not subject to disclosure.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

jad: