



OFFICE ATTORNEY GENERAL  
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HULL  
ATTORNEY GENERAL

March 22, 1976

The Honorable Jonathan Day  
City Attorney  
P. O. Box 1562  
Houston, Texas 77001

Open Records Decision No. 123

Re: City employees' home  
addresses.

The Honorable John C. Ross  
City Attorney  
Room 203, City-County Building  
El Paso, Texas 79901

Gentlemen:

Each of you has received a request under the Open Records Act, article 6252-17a, V.T.C.S., for a list of names and home addresses of city employees. The request to the City of El Paso is for a list of all police personnel, while the request to the City of Houston is for a list of all city employees, which of course includes police personnel. We have previously said that information which would reveal the identity of undercover law enforcement agents is excepted from disclosure under section 3(a)(8), which excepts information that deals with the detection and investigation of crime. Open Records Decision No. 22 (1974). However, we believe that the names of regular police personnel ordinarily must be treated the same as other city employees. See Open Records Decision No. 22 (1974).

The major issue presented by your requests is whether the disclosure of home addresses of city employees constitutes a "clearly unwarranted invasion of personal privacy," within the meaning of section 3(a)(2) of the Act, which excepts from forced disclosure information in personnel files constituting such an invasion of privacy.

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We have previously held that the home addresses of employees of a governmental body are public information. In Open Records Decision No. 54 (1974), we said:

We have not found any special circumstances which would justify non-disclosure of any of the information as a clearly unwarranted invasion of privacy, within Sec. 3(a)(2) of the Act. Therefore, we consider the holding of Open Records Decision No. 16 (1974) dispositive, to wit: home address information is public and should be disclosed.

A number of our decisions have required the release of home addresses of individuals and groups. While not all of these decisions spoke directly to the issue, in each we treated such information as public. Open Records Decisions No. 16 (1974) (names and home addresses of entering freshmen at university); No. 18A (1974) (basic information from police offense report, including name, address); No. 33 (1974) (name, age, address of those whose marijuana possession conviction sentences commuted); No. 37 (1974) (name, address, etc. of school district employees); No. 38 (1974) (list of registered voters who cast ballots in school board election, such list including addresses); No. 39 (1974) (home and residence address of bank stockowners reported by bank to assessor-collector of taxes); No. 45 (1974) (copies of electrical permits, which included name and address of owners); No. 46 (1974) (name and address of persons requesting notice of competitive bidding by Board of Control); No. 51 (1974) (water department customer information, including prior, current and forwarding address); No. 54 (1974) (employees' addresses); No. 57 (1974) (name, local address, phone number of university seniors); No. 63 (1974) (water department billing information, including address); No. 65 (1975) (name, address of licensed drivers over 64 years of age); No. 72 (1975) (names and addresses of parents or guardians of students at elementary school); No. 76 (1975) (tax assessor-collector's rendition book, which included names and addresses); No. 85 (1975) (fire department citations issued, showing name, address, violation of persons cited); No. 92 (1975) (last known address of persons pardoned); No. 96 (1975) (classification, major, address, phone of university students).

We said in Attorney General Opinion H-242 (1974) that information including name and address of licensees of Board of Vocational Nurse Examiners was not excepted from disclosure by a constitutional right of privacy.

The Federal Educational Rights and Privacy Act of 1974, 20 U.S.C.A. § 1232g, has changed the law relating to directory-type information about students and their parents, and the Open Records Act was amended in 1975 by the 64th Legislature, to make our law conform with federal requirements in regard to such student records. V.T.C.S. art. 6252-17a, § 14(e). In Open Records Decision No. 96 (1975), we explained the procedure necessary to comply with the federal law, prior to disclosure of a list of university students. Notice and an opportunity to assert a privacy interest in directory-type information is required.

The application of this federal act to student records in Texas, and the enactment of the federal Privacy Act of 1974, 5 U.S.C. § 552a, which is applicable to federal executive agencies, are significant developments in the growing law of privacy. However, other than the Texas Legislature's action in conforming our Open Records Act to the federal act in regard to student records, no statute or court decision in Texas provides any basis for concluding other than we did in Open Records Decision No. 54 (1974) that, absent special circumstances, the home address of a governmental employee is public information.

The federal Freedom of Information Act contains an exemption for "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). Our personnel file exception in section 3(a)(2) of the Open Records Act, is clearly patterned after the federal one. V.T.C.S. art. 6252-17a, § 3(a)(2).

The federal courts have experienced great difficulty in determining the applicability of this exception to address information. Three cases have dealt with accessibility of addresses. In one it was held that the addresses of union members were disclosable to well-qualified researchers, the court indicating that disclosure could be restricted to the requesting party for the proposed use. Getman v. N.L.R.B., 450 F.2d 670 (D.C. Cir. 1971). In another case, the court held that disclosure of names and addresses of heads of families who produce wine for home use, where the requesting party advanced no public interest purpose in disclosure, would be an invasion of privacy. Wine Hobby U.S.A. Inc. v. I.R.S., 502 F.2d 133, 137 (3rd Cir. 1974). In the third case, the court discussed the issues at length in considering a request for the names and addresses of persons filing customs declaration forms during a certain period upon entry from certain parts of the world. In this case, the court deferred a decision, based upon the possibility that the information could be obtained by discovery in related litigation, thus permitting the court to avoid resolution of the difficult questions involved. Ditlow v. Shultz, 517 F.2d 166, 173-74 (D.C. Cir. 1975).

These cases have characterized the privacy invasions involved in disclosure of the addresses as "relatively minor" and "minimal" (Getman v. N.L.R.B., supra at 674-75), "not as serious as that considered by the court in other cases" (Wine Hobby U.S.A. Inc. v. I.R.S., supra at 137), and "a not clearly inconsequential" but "less than a substantial invasion" (Ditlow v. Shultz, supra at 170). These cases offer no clear or consistent authority which would justify a change in our previous interpretation of the section 3(a)(2) exception as not ordinarily applicable to home address information of governmental employees.

The most cogent lesson of these cases is that the creation of a right against relatively minor invasions of privacy through disclosure of governmental-held information is a matter appropriate for the Legislature.

When the Legislature amended the Open Records Act in 1975 to conform it to the federal Act extending specific rights of privacy in regard to student information, no action was taken to indicate dissatisfaction with our prior decisions requiring address information to be disclosed, or with Open Records Decision No. 54 (1974) in particular. When the Legislature has acquiesced in an administrative interpretation of language of a statute, and particularly where another part of that statute has been amended, it is presumed that the administrative construction is correct. 53 Tex.Jur.2d Statutes §§ 179, 180, 183.

By our decision in Open Records Decision No. 54 (1974), we recognized that exceptional circumstances might exist which might bring an employee's home address within the section 3(a)(2) exception. Thereafter, in Attorney General Opinion H-483 (1974), we said that a governmental body may properly make a factual determination as to whether certain information it holds is private, based on whether it is information the disclosure of which would outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities. Billings v. Atkinson, 489 S.W.2d 858 (Tex. Sup. 1973). We said that if such determination is disputed by the requestor, the question should be presented for our decision on the facts of that case under section 7 of the Open Records Act.

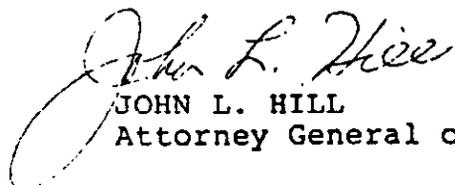
Section 3(a)(2) of the Act is applicable only to information in personnel files, the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." The names of public employees are specifically made public. V.T.C.S. art. 6252-17a, § 6(a)(2). When a public employee seeks to establish a substantial privacy interest in his or her home address, we believe facts showing a consistent history of affirmative action to restrict public access to such information, as by maintaining an unlisted phone number, using a post office box for personal mail, and taking similar precautions, would be relevant to the governing body's determination, along with statements of the special circumstances which would make disclosure a clearly unwarranted invasion of personal privacy.

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If and when an employee has asserted and has met the burden of establishing a substantial privacy interest in his or her home address, the governmental body should promptly provide the names of such employees to the requesting party, and notify the requestor of its determination that those home addresses are excepted from disclosure under section 3(a)(2) of the Act. If the requesting party disputes the determination and desires to pursue his original request as to the home addresses of those persons, the matter should then be forwarded to this office within a reasonable time, no later than 10 days from the date of the original request.

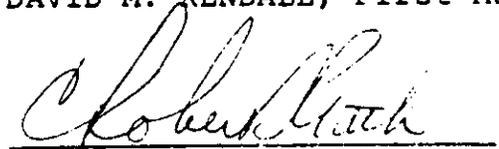
In the specific cases presented here, the information requested is public and should be disclosed unless such factual determinations are made and submitted to this office in accordance with the Act.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
DAVID M. KENDALL, First Assistant

  
C. ROBERT HEATH, Chairman  
Opinion Committee

jwb