



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

November 17, 1989

Mr. Charles F. McNabb
First Assistant City Attorney
City of El Paso
2 Civic Center Plaza
El Paso, Texas 79999

Dear Mr. McNabb:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 7098; this decision is OR89-370.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. Attorney General Opinion H-436 (1974). The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The City of El Paso received an open records request for copies of all applications for employment submitted between January 1, 1989, and July 19, 1989, with the city's mass transit department for a position as an information clerk. The employment applications, among other information, include information relating to the applicants' criminal history, job-related disabilities, previous job terminations, military service discharge, and general employment history. The city seeks to withhold the information in these categories under section 3(a)(2) of the Open Records Act.

Section 3(a)(2) protects information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Section 3(a)(2)

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does not apply to applicants for employment. Open Records Decision Nos. 345 (1982); 110 (1975).

Even though the information at issue here is not protected by section 3(a)(2), personal privacy rights are implicated such that this office will raise and consider the applicability of section 3(a)(1), which protects information deemed confidential by law, whether statutory, constitutional, or by judicial decision. Its primary purpose is to protect privacy interests, including constitutional and common-law privacy. Information may be withheld under common-law privacy incorporated under section 3(a)(1) only if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information is of no legitimate public concern. Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 930 (1977).

Information on employment applications regarding unsuccessful applicants' serious illnesses or operations and physical handicaps may be withheld, Open Records Decision No. 455 (1987), as well as medical information relating to drug or alcohol dependency, gynecological/obstetrical illness or emotional/mental distress. Open Records Decision Nos. 370 (1983); 262 (1980). The fact that an applicant may have a physical impairment that would restrict his or her ability to perform the job applied for is not, however, confidential.

Prior employment history, including the reasons for resignation, must be disclosed. Open Records Decision Nos. 329 (1982); 277, 264 (1981). Information relating to qualifications of applicants for public employment, including formal education, licenses and certificates, employment experience, professional awards and recognition and memberships in professional organizations must also be released. See Open Records Decision 273 (1981). Social security numbers of applicants for public employment are also public. Open Records Decision No. 254 (1980).

The fact that a person has served in the military is not the kind of highly personal or embarrassing fact the disclosure of which would be objectionable to a reasonable person. The fact of military service therefore may not be withheld. However, the type of discharge might be objectionable in certain instances. This fact -- the type of discharge -- may be withheld for all applicants, since disclosure of only favorable discharges would disclose by

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negative implication the identities of applicants who received unfavorable discharges.

Birth certificates submitted by an applicant for public employment may contain sensitive notations, such as the fact that a person is illegitimate, which may be protected by common law or constitutional privacy under section 3(a)(1). Absent such special circumstances, however, information on birth certificates must be released. See Open Records Decision No. 486 (1987). Information on a driver's license implicates no privacy interests, nor do educational transcripts submitted as part of an application for employment. Cf. V.T.C.S. art. 6252-17a, § 3(a)(2) (professional public school employees' transcripts protected).

Information concerning an individual's criminal history obtained from a law enforcement agency is not public as a general rule, as release of this type of information may implicate false light privacy interests protected by section 3(a)(1). See Open Records Decision Nos. 522 (1989), 438 (1986). However, facts about arrests or convictions provided by the applicant must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-370.

Yours very truly,

**Open Government Section
of the Opinion Committee**

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of the Opinion Committee
Prepared by David A. Newton
Assistant Attorney General

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Ref.: ID# 7098

cc: Mr. Oscar B. White
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