



Office of the Attorney General
State of Texas

May 8, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Richard C. Hile
Tonahill, Hile, Leister & Jacobellis
P. O. Box 670
Jasper, Texas 75951

OR92-128

Dear Mr. Hile:

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# 14159.

The City of Jasper (the city), which you represent, has received a request for information relating to a former city employee's Texas Municipal Retirement System benefits, to include "all monies the city has ever paid . . . and the amount he will receive." You advise us that this information is contained in the former employee's personnel file and have submitted such to us for review. You seek to withhold the requested information under section 3(a)(1) of the Open Records Act.

You claim the requested information is excepted from required public disclosure by section 803.402 of the Government Code, which governs the Texas Municipal Retirement System. In *Calvert v. Employees Retirement Sys. of Tex.*, 648 S.W.2d 418 (Tex. App.--Austin 1983, writ ref'd n.r.e.), a Texas Court of Appeals ruled that the availability of information within former V.T.C.S. article 6228k § 7 (now section 803.402 of the Government Code) was governed by section 3(a)(2) of the Open Records Act, rather than section 3(a)(1). See Open Records Decision No. 545 (1990) at 5.

Section 3(a)(2) excepts from required public disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The court in *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) found that section 3(a)(2) protects personnel file information only if its release would cause an invasion of

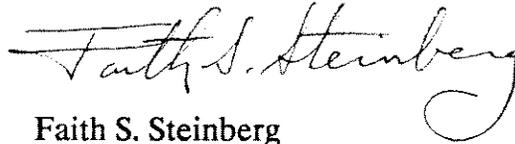
privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Open Records Decision No. 545 at 3 held that "[p]ersonal investment decisions appear to be of the kind of financial information that a person of ordinary sensibilities would object to having publicly disclosed." This decision further held that "an individual's investment decisions with respect to a deferred compensation plan, including his choice of investment product and the amounts invested in a product, are not of those kinds of financial transactions that are ordinarily of legitimate public interest." *Id.* at 4. However, when the information does not reflect a personal investment decision, as when participation in a plan and the terms of that plan are mandatory, it would not be within privacy protection.

In the present case, we have been informed that participation in the Texas Municipal Retirement System is mandatory for all City of Jasper municipal employees, and that deductions are taken at the same rate from all employees' salaries. As information about salaries of public employees is open under article 6252-17a, we do not find that section 3(a)(1) permits you to withhold information about the employee's participation in the plan or the amounts contributed to his account. However, other information in the documents must be withheld under section 3(a)(1). These items consist of information indicating the beneficiary(ies) of the retirement plan, as well as any information indicating personal investment decisions of the employee. Moreover, the employee's home address must be withheld under section 3(a)(17) if he has chosen to have this information held confidential in accordance with section 3(A) of the Open Records Act.

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 OR92-128.

Yours very truly,

A handwritten signature in cursive script that reads "Faith S. Steinberg". The signature is written in black ink and is positioned above the typed name.

Faith S. Steinberg
Assistant Attorney General
Opinion Committee

FSS/GK/lmm

Ref.: ID# 14159

cc: Ms. Sharon Atkins
The Beaumont Enterprise
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