



Office of the Attorney General  
State of Texas

April 17, 1992

DAN MORALES  
ATTORNEY GENERAL

Mr. Jeff Hankins  
Legal Assistant  
Program Division, Legal Services, 110-1C  
Texas Department of Insurance  
P. O. Box 149104  
Austin, Texas 78714-9104

OR92-163

Dear Mr. Hankins:

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# 15185.

You have received a request for information relating to a recent reduction in force at the Texas Department of Insurance (the "department"). Specifically, the requestor seeks:

1. The Reducation [sic] in Force (RIF) plan implemented or to be implemented during 1992 by the Texas Department of Insurance;
2. List of all agency employees RIF'd on January 29, 1992;
3. List of employees rehired/recalled after January 29, 1992;
4. List of employees terminated, resigned, RIF'd, retired, or otherwise separated from Department after January 29, 1992;
5. List of all job postings and/or openings or positions filled since January 1, 1991; and

6. List of all temporary employees hired since January 1, 1992, through contracts with employment agencies.

You advise us that information responsive to item number five will be made available to the requestor. You also advise us that information responsive to item number one does not exist. The Open Records Act applies only to information in existence and does not require a governmental body to prepare new information. Open Records Decision No. 572 (1990). Accordingly, you are not obligated under the Open Records Act to respond to item number one. You seek to withhold the remaining information, however, under the doctrine of common-law privacy as incorporated into the Open Records Act by section 3(a)(1). You also claim that some of the information is excepted from required public disclosure by section 3(a)(2).

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The doctrine of common-law privacy protects information containing highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, provided the information is not of legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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). *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); *see also* Open Records Decision No. 441 (1986). Section 6(2) of the Open Records Act makes public "the names, sex, ethnicity, salaries, title, and dates of employment of all employees and officers of governmental bodies." Open Records Decision No. 557 (1990). Generally, actions associated with a person's public employment do not constitute his private affairs. *See* Open Records Decision No. 470 (1987). On numerous occasions, this office has held that the *reasons* for an employee's resignation or termination are not ordinarily excepted from required public disclosure by the doctrine of common-law privacy. *See, e.g.*, Open Records Decision Nos. 444 (1986) (reason's for employee's termination not excepted under doctrine of common-law privacy) (section 3(a)(2)); 329 (1982); 269 (1981) (documents relating to an employee's resignation may not be withheld under doctrine of common-law privacy) (section 3(a)(2)).

We note that information responsive to item number two was addressed in a previous determination of this office, Open Records Letter OR92-86 (copy enclosed). In this informal ruling we determined that the list of employees "RIF'd"

on January 29, 1992, was not protected by the doctrine common-law privacy as incorporated into the Open Records Act by section 3(a)(1) and was thus subject to required public disclosure. For the reasons stated in OR92-86, information responsive to item number two is not protected under sections 3(a)(2) and must be released to the requestor.

We have examined the information submitted to us for review responsive to item numbers three, four, and six of the request.<sup>1</sup> We conclude that the names of employees separated, terminated and subsequently rehired, or hired on a temporary basis are of legitimate public concern and may not be withheld from required public disclosure under sections 3(a)(1) and 3(a)(2) of the Open Records Act. Accordingly, the information responsive to item numbers three, four, and six 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 OR92-163.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/GK/lmm

Enclosures: Open Records Letter OR92-86

Ref.: ID# 15185  
ID# 15378  
ID# 14869 (OR92-86)

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<sup>1</sup>Some of the documents submitted to us for review also contain information not requested, including the title, pay group, activity, and assignment of department employees. Because this information was not requested, we will not address its availability under the Open Records Act.

cc: Ms. Susan Morrison  
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