



Office of the Attorney General

State of Texas
May 29, 1992

DAN MORALES

ATTORNEY GENERAL

David Smith, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR92-281

Dear Dr. Smith:

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# 15796.

The Texas Department of Health (the "department") has received a request for information relating to the selection process for four employment positions. Specifically, the requestor seeks "copies of all documents, applications, interview notes, resumes, score sheets, performance evaluations, screening documents and any other instruments or documents used in the selection process" for the four positions. You have submitted to us for review three attachments (Attachments B, C, and D) as sample information responsive to the request. You claim that Attachments B, C, and D are excepted from required public disclosure by third-party privacy interests as incorporated into the Open Records Act by section 3(a)(1). You also claim that Attachments C and D are excepted from required public disclosure by section 3(a)(11).

Information may be withheld from required public disclosure under common-law privacy if it meets the criteria 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, 685 (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. The test for constitutional privacy involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *Id.* The constitutional right of privacy protects information relating to

marriage, procreation, contraception, family relationships, and child rearing and education. Open Records Decision No. 447 (1986) at 4.

Previous open records decisions have determined that the following information about applicants for public employment is not intimate or embarrassing: educational training; names and addresses of former employers; dates of employment; kind of work and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performances or abilities; names of friends or relatives employed by the governmental body; birth date; and social security number. See Open Records Decision No. 455 (1987); see also Open Records Decision Nos. 342, 329 (1982); 298 (1981).

Attachment B is a department application for employment. Attachment C is a document titled "Public Health Technician II Questionnaire" and contains the applicant's responses to several questions regarding her qualifications and experience. Attachment D is a document titled "Screening Device Cancer Registry Division Public Health Technician II" and contains education and experience evaluation criteria and evaluations. We have reviewed the documents submitted to us and conclude that they contain no information which is intimate or embarrassing. Accordingly, they may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act.

You also claim that Attachments C and D are excepted from required public disclosure by section 3(a)(11), which excepts:

inter-agency or intra-agency memorandums or letters
which would not be available by law to a party in
litigation with the agency.

Section 3(a)(11) excepts memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policy-making or deliberative process. Open Records Decision No. 466 (1987) at 1 (copy enclosed). However, facts and written observations of fact which are severable from material excepted under section 3(a)(11) must be disclosed. Open Records Decision No. 582 (1990). In Open Records Decision No. 565 (1990) at 13, this office held that the interview score worksheet and interview summary forms used in the evaluation of an applicant for public employment constituted advice, opinion, and recommendation.

Attachment C contains no advice, opinion, or recommendation and may not be withheld from required public disclosure under section 3(a)(11). The evaluations in Attachment D, however, represent advice, opinion, and recommendation and may be excepted from required public disclosure by section 3(a)(11) of the Open Records Act. For your convenience, we have marked those portions of Attachment D for which the section 3(a)(11) exception applies. The remainder of Attachment D and Attachments C and D 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 OR92-281.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GK/lmm

Enclosures: Open Records Decision No. 466
Submitted Documents

Ref.: ID# 15796

cc: Mr. Emmanuel C. Iroanya
P. O. Box 14061
Austin, Texas 78761
(w/o enclosures)