



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 19, 1992

Ms. Cathy L. Meyer  
Senior Assistant City Attorney  
City of Irving  
Office of City Attorney  
P. O. Box 152288  
Irving, Texas 75015-2288

OR92-356

Dear Ms. Meyer:

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# 16314.

The City of Irving (the "city") received a request from the City of Carrollton Parks and Recreation Department for "all performance evaluations and disciplinary records" for a former city employee. Expressing concern for the former employee's privacy interests, you now seek an open records decision from this office pursuant to section 7(c) of the Open Records Act.<sup>1</sup>

Section 7(c) of the act provides:

(c) In cases in which a third party's privacy or property interests may be implicated, including but not limited to Subdivisions (1), (4), (10), and (14) of Subsection (a) of Section 3 of this Act, the governmental body may decline to release the information in order to request an attorney general opinion. A person whose interests may be implicated or any other person may submit in writing to the attorney general the person's reasons for withholding or releasing the information. In such cases, the governmental body may, but is not required to, submit

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<sup>1</sup>You indicate that only those records that you have submitted to this office as "Exhibit B" come within the ambit of the request for information. This letter ruling therefore does not address whether the city must release the contents of "Exhibit C."

its reasons why the information should or should not be withheld.

V.T.C.S. art. 6292-17a, §7(c).

When this office receives a request for an open records decision pursuant to section 7(c), it is our standard practice to solicit from the third parties arguments for the withholding of requested information. In this instance, however, after reviewing the documents at issue this office has determined that such a solicitation is unwarranted in this instance because no legal argument could be made that the release of the records would violate the employee's privacy.

Section 3(a)(2) of the Open Records Act protects "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . ." The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information must contain 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 must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

The information at issue details the circumstances surrounding the termination of the employee. These records directly relate to the former employee's arrest that resulted from his actions as a public servant and as such cannot be deemed to be outside the realm of public interest. Section 3(a)(2) was not intended to protect the type of information at issue here. We note, however, that the former employee elected, pursuant to section 3A of the Open Records Act, not to have his home address and telephone number released to the public. The city must therefore withhold this information. *See* V.T.C.S. art. 6252-17a, § 3(a)(17). The city must release the remaining information.

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 OR92-356.

Yours very truly,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/RWP/lmm

Ref.: ID# 16314

cc: Ms. Stacy Waters  
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