



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1992

Ms. Diana L. Granger
Acting City Attorney
City of Austin, Department of Law
Norwood Tower
P. O. Box 1088
Austin, Texas 78767-8828

OR92-370

Dear Ms. Granger:

The City of Austin asks whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID # 15060.

The City of Austin has received an Open Records Act request from city employees Harry Singletary and Dink Foree for all information relating to allegations against them for alleged on-the-job misconduct. You have advised that the two employees are involved in on-going disciplinary proceedings. You have furnished for our review the investigative file relating to these matters which includes a memorandum summarizing the findings of the investigation and statements taken from Singletary's and Foree's co-workers and subordinates. You claim that portions of the requested materials are excepted from required public disclosure by Open Records Act section 3(a)(1) and 3(a)(11).

Open Records Act section 3(a) states that all information in the possession of governmental bodies is public information, except:

(1) information deemed confidential by law, either Constitutional, statutory, or by judicial decision; [and]

....

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

Common-law privacy, and thus section 3(a)(1), protects from disclosure any information which contains highly embarrassing facts about a person, the disclosure of which would be highly objectionable to a person of ordinary sensibilities, and which is of no legitimate concern to the public. Open Records Decision Nos. 579, 562, 561, 554 (1990). The documents furnished for our review contain allegations that are highly personal in nature; however, there are no specific allegations of misconduct or on-the-job misconduct by these employees. We conclude that disclosure of the identities of these employees would be potentially embarrassing to a person of reasonable sensibilities; and because the allegations relate to off-the-job conduct and there are no allegations of misconduct by these employees, there is no public interest in the identities of the employees against whom the allegations were made. Accordingly, this information is excepted by section 3(a)(1).

You have redacted from the witnesses' statements references to alleged on-the-job sexual misconduct of certain female employees. You contend that these allegations are most likely false, that they place the female employees in a false light, and therefore should be excepted under section 3(a)(1). You also claim that this information should be excepted because of privacy concerns. In Open Records Decision No. 579 at 10, this office ruled:

An investigative file concerning a specific sexual harassment complaint is not excepted from required public disclosure . . . as a public disclosure of private facts. . . . Information actionable under the tort doctrine of false-light privacy is not within section 3(a)(1) protection of information deemed confidential by law.

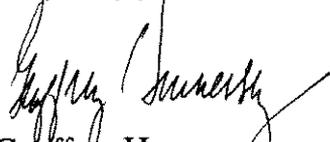
In Decision No. 579 at 10, we reasoned that the public's interest in the conduct of public employees outweighed the individual's privacy interests. On the basis of Open Records Decision No. 579, we conclude that the alleged sexual misconduct of the female employees is not excepted under Open Records Act section 3(a)(1) as public disclosure of private facts or under the tort doctrine of false-light privacy.

Open Records Act section 3(a)(11) protects from required public disclosure internal governmental records reflecting advice, opinion, or recommendation on policy matters and is intended to encourage open and frank discussion regarding administrative action. Open Records Decision Nos. 582, 574, 565 (1990). You have highlighted certain portions from the Susan Goodfellow memo to the investigator of January 16, 1992, in which Ms. Goodfellow proposes certain disciplinary sanctions and recommendations to prevent future occurrences. The redacted statements

and recommendations to prevent future occurrences. The redacted statements relate to Ms. Goodfellow's recommendations and opinions, and therefore this material is excepted from required public disclosure by section 3(a)(11).

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 OR92-370.

Very truly yours,


Geoffrey Hennessey
Assistant Attorney General
Opinions Committee

Ref.: ID# 15060
ID# 15103

cc: Mr. Harry Singletary
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Austin City Marshal's Office
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