



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 7, 1992

Mr. Tony Fabelo, Ph.D.
Executive Director
Criminal Justice Policy Council
P. O. Box 13332
Austin, Texas 78711-3332

OR92-448

Dear Dr. Fabelo:

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# 16601.

You have received a request for certain Criminal Justice Policy Council (the "council") payroll records. Specifically, the requestor seeks ten categories of information, including council organizational charts, employee rosters, notices of employee terminations, certain job postings, certain job descriptions, certain payroll records including pay grades, and a list of employees considered for termination. You have submitted to us for review sample payroll records, including a payroll worksheet, a "State of Texas Payroll Voucher," and a three-page "Payroll Detail Sheet." You claim that some of the information contained on these documents is excepted from required public disclosure by section 3(a)(1) of the Open Records Act. Because you do not comment on the remainder of the requested information, we presume that it has been or will be made available to the requestor. See Open Records Decision No. 363 (1983).

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Information may be withheld from required public disclosure under common-law privacy if it meets the criteria that the Texas Supreme Court articulated for section 3(a)(1) of the act. See *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. Open Records Decision No. 545 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." Open Records Decision No. 545 (1990) at 3. 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. Section 6(2) of the Open Records Act provides that the salary of a public employee is public, and section 6(3) provides that information in any account, voucher, or contract dealing with the receipt or expenditure of public funds is public unless otherwise made confidential by law.

You advise us that insurance coverage is selected by employees from among several options, but that participation in a deferred compensation plan is mandatory. Accordingly, we conclude that information in the submitted documents which details insurance plan deductions reflects personnel financial decisions. In addition, certain tax information must be withheld as well. *See* Attorney General Opinion H-1274 (1978) (information in a federal tax return submitted to a tax assessor-collector excepted under section 3(a)(1)); Open Records Decision No. 600 (1992). For your convenience, we have marked the information which must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. The remaining information 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 OR92-448.

Yours very truly,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/GCK/lmm

Enclosures: Marked Documents

Ref.: ID# 16601
ID# 16730

cc: Mr. Randall C. Doubrava
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