



Office of the Attorney General
State of Texas

August 6, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Vince DiPiazza
City Manager
City of Santa Fe
P. O. Box 950
Santa Fe, Texas 77510

OR92-454

Dear Mr. DiPiazza:

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# 15864.

The City of Santa Fe (the "city") received two open records requests. One of the requests seeks access to accident reports and offense reports prepared by the city's police department. You have submitted to this office representative samples of these reports, portions of which you contend come under the protection of sections 3(a)(1) and 3(a)(8) of the Open Records Act.

Previous determinations of this office, Open Records Decision Nos. 127 (1976) and 43 (1974), govern this request for records. Section 47 of V.T.C.S. article 6701d, makes public accident reports that are required to be submitted to the Department of Public Safety by peace officers as well as any supplements to those reports, including witness statements. Accordingly, the city must release these reports in their entirety.

With regard to police offense reports on pending investigations, the Texas Court of Appeals, in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. - Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), held that, among other information, the identities of arrestees and the police officer's narrative is public information, while the identification and description of witnesses and their statements may be withheld pursuant to section 3(a)(8). See Attachment 1. None of the information in the offense reports submitted to this office appear to come under the protection of common-law

privacy. See generally *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We have marked the portions of the offense reports that come under the protection of section 3(a)(8). The city must, however, release the remainder of these documents.

The other open records request seeks the "personnel folders" of two city police officers. You have submitted these records numbered according to the following system: Document 1-1, 1-2, 1-3, etc. We will refer to particular documents by this numbering system. A prior decision of this office, Open Records Decision No. 600 (1992) (enclosed), governs several aspects of this request. Documents 1-2 and 2-2 (federal tax information), 1-3 and 2-3 (medical, dental, and life insurance information), and 1-4 and 2-4 (retirement plan and credit union information) should be withheld pursuant to section 3(a)(1).

Although this office agrees with your contention that the employee evaluations designated Documents 1-5 and 2-5 consist of advice and opinion protected by section 3(a)(11) and thus may be withheld, see Open Records Decision No. 345 (1982), we find that neither Document 1-11 or 2-11, which you describe as "internal personnel communications," contain the type of information section 3(a)(11) was intended to protect. Documents 1-11 and 2-11 must therefore be released.

Additionally, one of the records reflecting disciplinary action, designated Document 2-6, contains only one paragraph that comes under the protection of section 3(a)(11) while the other records of disciplinary action, designated Document 1-6, contain no such information. You contend, however, that Documents 1-6 and 2-6 also come under the protection of section 3(a)(2). 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 in Documents 1-6 and 2-6 pertains solely to the police officers' actions as public servants, 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 in these two documents. The city must therefore release these records except for the marked portion of Document 2-6 that may be withheld pursuant to section 3(a)(11).

The city may, however, withhold the personal financial information contained in Document 1-8 pursuant to section 3(a)(2). *Cf.* Open Records Decision No. 481 (1987) (credit history information protected by common-law privacy). Document 2-9, pertaining to a police officer's call-up to active military duty, may not be withheld pursuant to section 3(a)(1) or 3(a)(2). *See* Open Records Decision No. 600. With regard to the INS I-9 Form, designated Document 2-10, section 3(a)(17) requires that the home address of the police officer be withheld, while section 3(a)(19) makes confidential the officer's photograph. The city must, however, release the remaining information in this form.

You state that the person requesting access to this information wishes to view the contents of the personnel files. If portions of the documents are exempt from disclosure, you ask whether you may make copies and blank out the exempt information. If so, you wish to know whether you may charge for such copies.

A governmental body may provide a copy of a requested record, with any confidential or nondisclosable information excised. Open Records Decision No. 606 (1992). Section 9(a) of the Open Records Act allows a governmental body to charge for noncertified photographic reproductions of public records. The cost "shall be in an amount that reasonably includes all costs related to reproducing the record, including costs of materials, labor, and overhead unless the request is for 50 pages or less of readily available information." V.T.C.S. art. 6252-17a, § 9(a). You may charge the requestor the cost of providing copies of the documents with exempt information blanked out. The amount of costs is to be determined according to section 9 and the regulations promulgated by the State Purchasing and General Services Commission (renamed the "General Services Commission," V.T.C.S. art. 601b, § 2.01).

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 OR92-454.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/lmm

Ref.: ID# 15864

Enclosures: Open Records Decision No. 600
Submitted documents
Attachment 1

cc: Mr. W. N. Young
4341 Ave. L
Santa Fe, Texas 77510
(w/o enclosures)