



Office of the Attorney General

State of Texas

September 16, 1992

DAN MORALES

ATTORNEY GENERAL

Ms. Mercedes Leal
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR92-513

Dear Ms. Leal:

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# 16128.

The Harris County Constable received a request for "copies of all statements and documents contained in Gregory Cox's personnel file or any file which involved any internal or external investigations relating to Gregory Cox during his tenure with your department." Mr. Cox consented to the release of any information contained in his personnel file. You submitted several documents as responsive to this request, most of which are statements from employees. You seek to withhold portions of these documents based on sections 3(a)(1), 3(a)(8) and 3(a)(11) of the Open Records Act.

You are concerned for the privacy rights of two individuals who are involved in certain allegations that are the subject of most of the documents you submitted. Section 3(a)(1) of the Open Records Act, which permits a governmental body to withhold information that is "deemed confidential by law, either Constitutional, statutory, or by judicial decision," applies to information when its disclosure would result in a violation of the common-law tort of invasion of privacy through the disclosure of private facts. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert denied*, 430 U.S. 931 (1977). A violation of the common-law tort occurs when (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, *and* (2) the information is of no legitimate concern to the public. *Id.*

While we appreciate your concerns for the privacy of the two individuals involved in the allegations, the public has a legitimate interest in knowing information that relates to the working environment and on-the-job conduct of public employees. Open Records Decision No. 579 (1990) at 3. Furthermore, the behavior alleged falls short of the kind of conduct that must occur to invoke the protection of common-law privacy, lacking as it does any highly intimate facts about the individuals' private affairs. *Id.* Thus, the information at issue does not meet the test for protection under the common-law tort of invasion of privacy through the disclosure of private facts.

You also assert that portions of the information may be withheld as protected by constitutional privacy. Section 3(a)(1) also incorporates constitutional privacy. 540 S.W.2d 668. There are two branches of constitutional privacy. *Fadjo v. Coon*, 633 F.2d 1172 (5th Cir. 1981). One involves an interest in making certain decisions without government interference; the other involves nondisclosure of private matters. *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). You assert the information must be withheld based on the second branch of constitutional privacy, "particularly since the allegations which were made were not found to have any merit."

The disclosure of information violates the constitutional right to privacy only when the information involves the most intimate aspects of human affairs. *Id.* at 492. Furthermore, disclosural privacy is not violated when a legitimate public interest in the information exists. Open Records Decision No. 455 (1987). The information at issue is about an unsubstantiated allegation about the relationship of two employees of the Harris County Constable and an unsubstantiated allegation of theft against one employee. We do not think this information concerns the "most intimate aspects of human affairs." Moreover, the public has an interest in the working environment of public offices and in complaints about the misconduct of public employees. Accordingly, the release of this information does not amount to a violation of the constitutional privacy rights of the two individuals involved in the allegations.

You raise section 3(a)(8) of the Open Records Act in regard to several documents which contain information about work assignments in the constable's office and one document which describes the security procedures for the property/storage room. We agree that you may withhold these documents pursuant to section 3(a)(8).

Finally, you assert that section 3(a)(11) applies to portions of several documents. We agree that you may properly withhold such information under 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 OR92-513.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/lmm

cc: Mr. Burt Springer
Staff Attorney
Office of General Counsel
Texas Conference of Police and Sheriffs
1445 North Loop West, Suite 970
Houston, Texas 77008