



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 21, 1993

Mr. Robert Giddings  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2981

OR93-248

Dear Mr. Giddings:

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# 19157.

The MD Anderson Cancer Center (the "cancer center"), a division of the University of Texas System, has received a request for information relating to terminated or retired cancer center employees. Specifically, the requestor seeks "a listing of the names and last known home addresses, home telephone numbers and positions of all terminated or retired university employees that separated service between June 1 and December 1, 1992." In addition, the requestor seeks information indicating whether the employees were enrolled in the Texas Optional Retirement plan and under which annuity carrier. Section 7(a) of the Open Records Act requires a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. You received the request for information under the Open Records Act on December 10, 1992. You partially responded to the request in a letter dated January 11, 1993, releasing all of the requested information except the home phone numbers, addresses, and optional retirement program carriers of the former employees. We received your request for a decision with respect to the information withheld in a letter postmarked March 18, 1993. Consequently, you neither responded to the request nor requested a determination of this office within the ten days required by section 7(a) of the act.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *id.* Normally, the presumption of openness can be overcome only by a compelling

demonstration that the information should not be released to the public, *i.e.*, that the information is deemed confidential by some other source of law or that third party interests are at stake. Open Records Decision No. 150 (1977); *see also* Open Records Decision No. 586 (1991) (law enforcement interest of third party may be compelling). You have submitted the requested information to us for review and claim that some of it is excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with common law privacy doctrine.

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 articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Indus. Found. of the S. v. Tex. 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. While information about an individual's financial status and past financial history is sometimes excepted under section 3(a)(1), financial dealings between an individual and governmental bodies are matters of public interest and are ordinarily not within the protection of common law privacy. Open Records Decision No. 590 (1991) at 3. However, in Open Records Decision No. 545 (1990), this office determined 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." *Id.* at 3. This decision further determined 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. *See also* Open Records Decision No. 600 (1992). The availability of "personal financial information" must be addressed on a case-by-case basis. Open Records Decision No. 373 (1983).

You have submitted to us for review a computer printout listing the names, home addresses and telephone numbers, and positions of cancer center employees. In addition, under the column heading "ORP Provider," the computer printout lists the provider, if any, chosen by employees opting into the optional retirement program. We conclude that this information reflects the kind of personal investment decisions addressed in Open Records Decisions 600 and 545. Accordingly, as this information is intimate or embarrassing and of no legitimate public interest, we conclude that the "ORP Provider" column must be excepted from required public disclosure under section 3(a)(1) of the Open Records Act in conjunction with common law privacy doctrine.

We note as well that section 3(a)(17)(A) of the Open Records Act excepts from required public disclosure "the home addresses or home telephone numbers of each official or employee or each former official or employee of a governmental body except as otherwise provided by Section 3A of this Act." Section 3A(a) provides that section 3(a)(17) may be applied only when an employee indicates in writing that he does not want his home address and telephone number disclosed. Accordingly, if the public employees at

issue here have indicated in writing that they do not want their home addresses and telephone numbers disclosed, the home addresses and telephone numbers must be withheld from required public disclosure under section 3(a)(17) of the Open Records Act.<sup>1</sup> The remaining information, however, must be released in its entirety.

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 contact our office.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/GCK/le

Ref.: ID# 19157  
ID# 19421  
ID# 19727

cc: Mr. Louis H. Geigerman  
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<sup>1</sup>A governmental body, however, may not solicit a response from its employees under section 3A in response to a pending open records request; whether requested information is public under section 3A and section 3(a)(17) is determined as of the time the request for information is made. Open Records Decision No. 530 (1989).