



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 7, 1993

Ms. Melissa Winblood-Franco  
Assistant City Attorney  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

OR93-302

Dear Ms. Winblood-Franco:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), article 6252-17a, V.T.C.S. Your request was assigned ID# 19566.

The City of El Paso (the "city") received an open records request for, *inter alia*,

Any and all documents in which [a retired police captain] was involved with the city's Civil Service Commission during his tenure in the El Paso Police Department.

You inform us the retired officer who is the subject of the request had been with the police department for approximately 21 years and that during his employment he would likely have interacted regularly with the Civil Service Commission in his capacity as supervisor over other police officers. Although you have released to the requestor the officer's civil service file, you contend that the request as written is otherwise overly broad in that many other such records as requested would be contained in other police officers' files.

We agree that the request as written is overly broad. You have demonstrated to this office that you have met your obligations under the act by making a good faith effort to advise the requestor of the measure of specificity with which she must request the type of documents she desires. *See* Open Records Decision No. 87 (1975). In this instance you need not respond further to this request until such time as the requestor identifies the particular records she wants.

The requestor also seeks "any and all civil service cases against [the officer] during his tenure in the El Paso Police Department." You contend that this request is also overly

broad. We disagree. It is apparent to this office that the requestor seeks civil service records in which the officer was the subject of disciplinary proceedings. You state, however, that the city has released to the requestor all such records. Consequently, unless the requestor specifies otherwise, the city has apparently complied with this request.

You also inquire whether specific documents contained in the officer's personnel file may be withheld. You submitted to this office for review completed character reference forms with "Confidential" pre-printed on the forms; these forms were completed in 1967, prior to the enactment of the Open Records Act. Clearly, the individuals who completed these forms did so with the understanding that the city would maintain the forms as confidential.

Generally, information is not confidential under the Open Records Act simply because the party submitting the information anticipates or requests that it be kept confidential. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied* 430 U.S. 931 (1977). In other words, a governmental body cannot, through a contract or agreement, overrule or repeal provisions of the Open Records Act. Attorney General Opinion JM-672 (1987). However, article I, section 16, of the Texas Constitution provides:

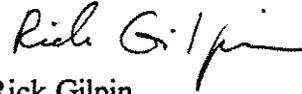
No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

The contract clause of the constitution forbids laws that operate retroactively on contracts; consequently, the Open Records Act does not require the city to release any information which it obtained prior to June 14, 1973 -- the effective date of the Open Records Act -- pursuant to a promise of confidentiality. *See* Open Records Decision No. 284 (1981).

Finally, you inquire whether a record of the officer's military discharge, DD Form 214, constitutes "private" information. Although it is not clear to this office as to whether this form is deemed confidential under the federal Privacy Act, 5 U.S.C., § 552a, in this instance we need not reach this issue because the Privacy Act does not govern records held by the city. *See* 5 U.S.C. §§ 552a(a)(1), 552(f). A review of the form does not reveal any information that implicates the common-law privacy interests of the retired officer. *See generally Industrial Found. of the South*, 540 S.W.2d 668, 683-85. The city therefore must release this record.

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,



Rick Gilpin  
Assistant Attorney General  
Opinion Committee

RG/RWP/le

Ref.: ID# 19566  
ID# 19811  
ID# 19874

cc: Ms. MariCarmen Eroles  
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