



Office of the Attorney General
State of Texas

June 21, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Leonard Guerra, Jr.
Personnel Director
County of Hidalgo
Department of Community Affairs
P. O. Box 1166
Edinburg, Texas 78540-1166

OR93-327

Dear Mr. Guerra:

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# 20067.

The Hidalgo County Department of Community Affairs (the "department") received an open records request for the job applications and resumes for all of its employees. Although you have withheld the personnel forms from the requestor in their entirety, you contend to this office that only certain portions of the requested documents come under the protection of section 3(a)(2) of the Open Records Act. You further state that "[o]f the 142 employees currently employed 128 signed a 'Personnel Department Release Form' not authorizing the Personnel Department to release any information" from their respective personnel files. (Your emphasis.) The "Personnel Department Release Form" appears to have been signed after, and in response to, the open records request.

We note at the outset that 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). Consequently, unless the requested records fall within one of the act's exceptions to disclosure, they must be released, notwithstanding any authorization form executed by departmental employees specifying otherwise.

Section 3(a)(2) protects, *inter alia*, "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The scope of section 3(a)(2) protection, however, is very narrow. *See*

Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). 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, 550 (Tex. App.--Austin, 1983, writ ref'd n.r.e.).

Your request is governed by a prior decision of this office. In Open Records Decision No. 455 (1987) (copy enclosed) this office held that each of the following types of information have a direct bearing on an applicant's suitability for employment and thus are *not* protected by common-law privacy: applicants' educational training; names and addresses of former employers; dates of employment; kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performances or abilities; birth dates, height and weight, marital status, and social security numbers. Consequently, you must release these types of information with regard to all departmental employees.

For similar reasons, this office generally believes that a public employee's prior conviction of a felony is also of legitimate public concern and thus also not protected by section 3(a)(2). *Compare United States Dept. of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989) (criminal history of private citizen protected by privacy) *with Plante v. Gonzalez*, 575 F.2d 1119, 1135 (5th Cir.) *cert denied*, 439 U. S. 1129 (1979) (privacy rights of public employees not as broad as those of a private citizen). We also note that while Open Records Decision No. 455 at 9 held that *applicants'* illnesses, operations and physical handicaps are generally protected by privacy, that decision acknowledged that there may be some legitimate public interest in these types of information regarding public employees. In any event, none of the representative samples of the applications submitted to this office contain information that implies either a felony conviction or embarrassing medical information; consequently, these records must be released in their entirety. However, if you believe that any of the other requested applications contain such information that should be withheld from the public pursuant to section 3(a)(2) in light of the discussion above, you must submit that information to this office for review within ten days of the date of this letter.¹

Finally, we address whether you must release the home address and telephone number of departmental employees. Section 3(a)(17) of the Open Records Act requires that the department withhold its employees' home addresses and telephone numbers, but only to the extent that the employees have elected to keep this

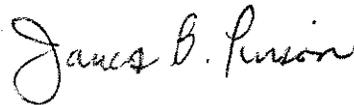
¹You must, however, release the remaining portions of those applications at this time.

information confidential in compliance with section 3A of the Open Records Act. The employees must have made this election prior to the department's receipt of the current open records request; otherwise the city must release the addresses and telephone numbers. Open Records Decision No. 530 (1989). Therefore, the "Personnel Department Release Forms," which were signed after receipt of the open records request, are not effective to invoke the exception of section 3(a)(17).

In summary, no portion of the applications and resumes submitted to this office for review comes under the protection of section 3(a)(2) and thus these and similar records must be released in their entirety. If the department believes that portions of other requested applications and resumes are protected by privacy interests, you must submit the information to this office with an explanation as to how the information substantially differs from that which we rule on here. The department may withhold an employee's home addresses and home telephone numbers only if the employee has elected to keep this information confidential prior to the department's receipt of the current open records request.

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,



James B. Pinson
Assistant Attorney General
Opinion Committee

JBP/RWP/jmn

Ref.: ID# 20067
ID# 20244
ID# 20496

Enclosures: Open Records Decision No. 455
Submitted documents

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