



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 30, 1994

Mr. Dick Gregg, Jr.
Gregg & Mieszkuc
17044 El Camino Real
Clear Lake City
Houston, Texas 77058

OR94-321

Dear Mr. Gregg:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 25555.

The City of Seabrook (the "city") has received a request for the personnel files and disciplinary files of two police officers. The requestor has specifically excluded from the scope of the request the officers' home addresses and telephone numbers, names of their relatives, their relatives' addresses and telephone numbers, and photographs of the officers and their relatives. You contend that this information is excepted from required public disclosure under sections 552.101, 552.102(a), and 552.117(1)(B) of the act.

Section 552.117(1)(B) makes confidential the home addresses and telephone numbers of peace officers. Because the requestor does not seek home addresses and telephone numbers, we need not address the applicability of section 552.117(1)(B).

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In order for information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former section 3(a)(1) of article 6252-17a, V.T.C.S.). The type of information considered intimate and embarrassing by the court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

Section 552.102 excepts in pertinent part:

(a) . . . information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under former section 3(a)(2), V.T.C.S. art. 6252-17a, was the same as that delineated in *Industrial Foundation* for former section 3(a)(1), V.T.C.S. art. 6252-17a). Accordingly, we address the applicability of sections 552.101 and 552.102 in tandem.

We have reviewed the files you submitted to our office. Some of the information is confidential under the doctrine of common-law privacy. The applications for employment reveal information about the officers' bank accounts and balances and the value of their homes. This background financial information is highly intimate and embarrassing and of no legitimate public interest. See generally Open Records Decision Nos. 600 (1992) at 11-12; 545 (1990). In addition, an interview form seeks information about one of the officer's sexual activities. We believe that these questions seek highly intimate and embarrassing information and that the officer's responses are of no legitimate public interest because they have no apparent bearing on his job qualifications. Although some the information on an application and in references regarding one of the officer's past drug use and problems with alcohol is arguably "highly intimate and embarrassing," we believe that this information is of legitimate public interest. See Open

Records Decision No. 470 (1987) (public has a legitimate interest in the job qualifications of public employees). Furthermore, information regarding the investigation of one of the officers is also of legitimate public interest.¹ *See id.* (public has a legitimate interest in the job performance of public employees); *see also* Open Records Decision No. 484 (1987).

In addition to the information that is protected under the doctrine of common-law privacy, there are a number of items in the records that may be confidential by statute. A social security number or "related record" is excepted from required public disclosure under section 552.101 of the act in conjunction with the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994) (copy enclosed); *see also* 42 U.S.C. § 405 (c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the city should ensure that the information is not confidential under federal law.

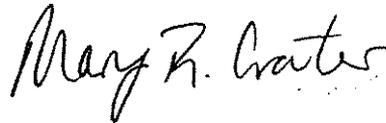
The files submitted to us for review also include information that appears to have been generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of criminal history information which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to criminal history information it generates. *Id.* Section 411.083 of the Government Code deems confidential criminal history records that the Department of Public Safety (the "DPS") maintains, except that the DPS may disseminate such records as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency, such as the Seabrook Police Department, to obtain criminal history record information; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose, *id.* § 411.089(b)(1). Thus, any criminal history record information data that was generated by the federal government or another state may not be made available to the requestor by the city except in accordance with federal regulations. *See* Open Records Decision No. 565. Furthermore, any criminal history

¹Some disciplinary information about peace officers is protected by statute in civil service cities. *See* Local Gov't Code ch. 143. You have not asserted that the City of Seabrook is a civil service city, nor have we been able to ascertain that this is the case.

record information received from DPS must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Please note, however, that driving record information is not confidential under chapter 411, *see* Gov't Code § 411.082(2)(B), and must be disclosed.

In sum, with the exceptions noted above, the files must be released in their entirety. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/MAR/rho

Ref.: ID# 25555

Enclosures: Open Records Decision No. 622
Marked documents

cc: Ms. Hope E. Hammill-Reh
16874 Royal Crest
Houston, Texas 77058
(w/o enclosures)