



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 24, 1994

Mr. J. G. Warburton
City Attorney
City of Brownsville
P.O. Box 911
Brownsville, Texas 78520

OR94-497

Dear Mr. Warburton:

The City of Brownsville (the "city") received a request for information pertaining to an investigation into allegations of mismanagement by the city's airport director, David Rader. The city has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. That request was assigned ID# 27122.

You state that some of the information requested does not exist. The city is not required to provide information which is not in its possession or to compile new information to comply with an open records request. Open Records Decision Nos. 561 (1990) at 9 (city does not have to obtain new information); 483 (1987) at 2; 452 (1986) at 3 (open records request applies to information in existence when request is received); 362 (1983) at 2 (city does not have to supply information that does not exist.) We assume that you have informed the requestor that some of the requested information does not exist.

You have also asserted that some of the information at issue is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.107 of the Government Code. We assume you are asserting sections 552.101 and 552.102 as to the letters that were sent to Mr. Rader. Information is private and excepted from disclosure under either section 552.101 or 552.102 if the information at issue is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d. 546 (Tex.App.--Austin 1983, writ ref'd n.r.e). Although the letters may be intimate or embarrassing to the former employee, the information at issue is of legitimate public concern. See Open Records Decision Nos. 470 (1987) at 4 (public has a legitimate interest in the job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is narrow).

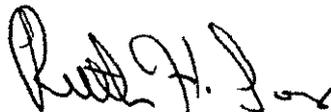
We note that the letters disclose Mr. Rader's home address. If as of the time of the open records request Mr. Rader had opted not to disclose his home address in accordance with section 552.124, that information may not be released. Open Records Decision Nos. 530 (1989) at 5; 482 (1987) at 4. Sections 552.117 and 552.124 of the Government Code protect from public access the home addresses and home telephone numbers of governmental employees who have chosen to keep this information private.

You also contend that the records are excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have provided information showing that Mr. Rader has filed a lawsuit against the city in regard to his termination and a review of the records submitted to this office indicate that they are related to that litigation. However, once information has been obtained by all parties to the litigation no section 552.103(a) interest generally exists with respect to that information. Open Records Decision No. 349 (1982) at 2. Since Mr. Rader, the opposing party in the litigation, has already seen and had access to these records, there is no justification for withholding the records from disclosure pursuant to section 552.103(a).

Section 552.107 provides an exception from disclosure for information that contains legal advice, opinions, recommendations, or client confidences that are privileged within the context of an attorney-client relationship. Open Records Decision No. 574 (1990). You have provided no information to show how section 552.107 would apply to the records at issue. Also, none of the records appear to contain legal advice, opinions, recommendations, or client confidences that are privileged within the context of an attorney-client relationship.

Because the information at issue is not excepted from disclosure, it must be released to the requestor. We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

Ref.: ID# 27122

Enclosures: Submitted documents

cc: Mr. Henry Krausse
Brownsville Herald
P.O. Box 351
Brownsville, Texas 78520
(w/o enclosures)