



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1994

Mr. Carter L. Hampton
Staples & Hampton
701 Texas Commerce Bank Building
860 Airport Freeway West
Hurst, Texas 76054

OR94-584

Dear Mr. Hampton:

On behalf of the City of Keller, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 23834.

The City of Keller received an open records request for nine categories of information regarding the hiring policies, employees, and applicants for jobs at the police department. You specifically indicate that you have provided the requestor with the first two and the last categories of information, and you specifically request our opinion regarding categories three through six. The requestor informs us, however, that you have refused to permit inspection or copying of the information in categories seven and eight. Therefore, we will also address the information in these categories.

You argue that you are unable to determine what information the requestor is seeking through his request for categories three through six. We will assume that you wish to advance the same argument regarding categories seven and eight. You also argue that the information in categories three through six is excepted from disclosure under sections 552.102(a), 552.117(1)(B), and 552.119.¹

A governmental body must make a good faith effort to relate a request to information that it holds. Open Records Decision No. 561 (1990) at 8. A governmental body may, when faced with a broad request for information, advise the requestor of the types of information available so that the requestor may narrow the request. *Id.* When

¹Categories seven and eight request information regarding the policies of the Keller Police Department, and thus, none of these exceptions could apply to this information.

the requested information is identified, however, the governmental body must promptly produce the information for inspection or duplication or both. Open Records Decision No. 87 (1975). A governmental body cannot refuse to provide information merely because the request involves a large volume of records or merely because the governmental body may incur substantial costs in compiling and preparing the information. *Industrial Found. S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (concluding that a governmental body cannot consider the cost of providing records in determining whether records should be disclosed). In other words, once a governmental body knows what information a requestor is seeking, the governmental body must provide that information even if doing so involves a case-by-case review of the files. *Id.*

We disagree with your contention that you are unable to respond to the request for information in categories three through eight because you are unable to determine what information the requestor is seeking. We believe that the requestor sufficiently stated the exact information requested. Moreover, we have no indication that you have advised the requestor of the types of records maintained by the department that might be responsive to the request or in any way helped the requestor narrow the request or relate the request to information that the department holds. You must determine by whatever means possible which records maintained by the department relate to the request. Although producing the requested records may prove to be burdensome because the department has to search its files to find them, you cannot deny the request on this basis alone.²

Sections 552.117(1)(B) and 552.119 except from disclosure the home addresses, the home telephone numbers, and the photographs of peace officers. However, the requestor has indicated to us that he is not seeking any information that would be excepted under either section 552.117 or section 552.119. Therefore, you are not being asked to produce this information, and you are not required to request an opinion from this office regarding whether you may withhold this information.

Section 552.102(a), in pertinent part, excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" This section protects information in a personnel file only if its release would invade the privacy of the employee under the test articulated for common-law privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld 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. *Industrial Found.*, 540 S.W.2d at 685. Therefore, most information in a personnel file will be subject to required public disclosure because

²Although the department cannot deny the request simply because producing the records would be burdensome, we note that the Open Records Act does permit the department to pass on its costs to the requestor in some circumstances. See Gov't Code §§ 552.261 - .269; 1 T.A.C. §§ 111.61 - .70.

the public has a legitimate interest in information concerning the qualifications and job performance of a public employee. Open Records Decision No. 444 (1986) at 3. Information previously held by this office not to be protected by common-law privacy interests includes, for example, applicants' and employees' educational background and training; names and addresses of former employers; dates of employment; kind of work; salary; reasons for leaving; names, occupations, addresses and phone numbers of character references; job performance or ability; birth dates; height; weight; marital status; race or ethnic group; and military service. See Open Records Decision Nos. 523 (1989); 455 (1987); 373 (1983); see also Open Records Decision Nos. 600 (1992); 470, 467 (1987); 444 (1986); 421 (1984); 405 (1983).

Because you have not submitted for review any of the documents you believe are excepted from disclosure under section 552.102, we are not able to help you determine which portions, if any, are excepted from disclosure under section 552.102. If after reviewing the discussion of section 552.102 here and in the cited cases you continue to believe that it excepts some of the requested information from disclosure, please submit the information you believe is excepted from disclosure to this office for review.

We also note that the Americans with Disabilities Act, 42 U.S.C. § 121.01 (the "ADA"), or other statutory law might make some of the requested information confidential under section 552.101. However, again we are unable to determine which portions of the requested information, if any, might be excepted from disclosure under a statute because you have not submitted any documents for review.

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,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Ref.: ID# 23834

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