



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1995

Mr. B. J. Hemmeline
Assistant Criminal District Attorney
Lubbock County
P.O. Box 10536
Lubbock, Texas 79408-3536

OR95-299

Dear Mr. Hemmeline:

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# 32430.

The Lubbock County Community Corrections Facility (the "facility") has received a request for "[a]ll tangible [items] showing the name, age, education[---] including the names but not the grades of the graduate courses taken, and the credentials of the person who was hired for each of the positions of [c]ounselor/[t]herapist which were advertised on several occasion[s] before March 3, 1995." You inform us that you have released the name, sex, ethnicity, salary, title, and dates of employment of employees filling each position. You have submitted the requested documents and assert that release of employee personnel files implicates the privacy interests of the employees. We assume that you are asserting that the information is excepted from disclosure pursuant to sections 552.101 and 552.102(a) of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 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 552.101 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. The type of information considered intimate and embarrassing by the Texas Supreme 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(a) 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.) (holding that test to be applied under section 552.102 was same as that delineated in *Industrial Found.*). Accordingly, we will consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102(a) together.

The scope of public employee privacy is very narrow. See Attorney General Opinion JM-229 (1984); Open Records Decision Nos. 423 (1984), 421 (1984), 400 (1983), 336 (1982). Although information relating to an investigation of a public employee may be embarrassing, the public generally has a legitimate interest in knowing about the job performance of public employees. See Open Records Decision Nos. 444 (1986), 405 (1983), 400 (1983). Similarly, information regarding a public employee's dismissal, demotion, promotion, or resignation is not generally excepted from public disclosure. See Open Records Decision No. 444 (1986) at 3-4; see also Open Records Decision No. 230 (1979) (concluding that § 552.102 does not except from public disclosure investigative report regarding allegations of misuse of school district employees and materials).

You seek to withhold educational transcripts and dates training occurred; former employment information; references; interview questions, responses, and notes; notes to the files by facility personnel, including job application worksheet; criminal history information; and routine correspondence between the applicant and the facility. The name, position, experience, licenses and certificates, professional awards and recognition, tenure, salary, educational level, age, membership in professional organizations, and prior employment of public employees are subject to disclosure. Open Records Decision No. 342 (1982). There is a legitimate public interest in determining whether public employees are qualified for the positions they hold. *Id.* Thus the educational information, former employment information, references, notes to the files, and routine correspondence between the applicant and the facility must be released.¹

The majority of the interview questions and answers must be made available to the requestor. However, some of the answers contain information protected under common-law privacy, because the information is intimate and embarrassing and of no legitimate public concern. For your convenience we have marked this information. You must withhold the marked portions of the interview responses.

The submitted information includes criminal history record information ("CHRI") distributed at the state and federal level. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). In addition, section 411.097(c) of the Government Code prohibits the department from disclosing any CHRI obtained from the Department of Public Safety ("DPS") or any other criminal justice agency. *See also* Gov't Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Accordingly, pursuant to state law and federal regulations, the department may not release the submitted CHRI to the requestor.

We have marked those portions of the documents that must be withheld under section 552.101.² Except as noted above, you may not withhold information under sections 552.101 and 552.102.

¹We note that you have redacted the addresses and phone numbers of employee references. Disclosure of a person's name, home address, and telephone number is not an invasion of privacy. Open Records Decision No. 554 (1990). Disclosure of such information may be prevented only by demonstrating the special circumstances outlined in Open Records Decision No. 169 (1977) (copy enclosed). *See also* Open Records Decision No. 264 (1981). The facility has not raised any special circumstances that would apply to this information. Therefore, it must be released.

²We note that the information submitted contains social security numbers. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), in certain cases.

You have redacted home telephone numbers and addresses from the submitted documents. We assume that you are claiming the information must be withheld pursuant to section 552.117. You must withhold the home addresses and telephone numbers of all current or former officials or employees of the facility who have requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). Whether a particular piece of information is nondisclosable under section 552.117 must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. Therefore, you may not withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. We are unable to determine from the submitted files whether the individuals whose addresses and telephone numbers are at issue have opted for this information to be confidential. If the information is protected from disclosure under sections 552.117 and 552.024, it may not be released.³

In summary, except as noted above, the documents must be released. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/LMM/rho

(Footnote continued)

In relevant part, the 1990 amendments to the federal Social Security Act make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information that you have provided, we are unable to determine whether the social security numbers contained in the submitted documents are confidential under federal law. Section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

³You redacted former work telephone numbers from the submitted applications. Because information regarding prior employment of public employees is subject to public disclosure, we find no basis for withholding the former work telephone numbers noted on the applications. *See* Open Records Decision No 342 (1982). You must release this information.

Ref.: ID# 32430

Enclosures: Marked documents
Open Records Decision No. 169 (1977)

cc: Mr. Will R. Clack
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(w/o enclosures)