



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 11, 1995

Ms. Tracy L. Petrie  
City Secretary  
City of Mont Belvieu  
P.O. Box 1048  
Mont Belvieu, Texas 77580

OR95-550

Dear Ms. Petrie:

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# 28507.

The city of Mont Belvieu received a request for a "certified copy of all evaluations since 5/92 to present." You have interpreted that request to mean personnel evaluations and have submitted one evaluation as a representative sample.<sup>1</sup> You assert that the evaluations are excepted from public disclosure by section 552.102(a).

Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* it is of no legitimate concern to the public. Even when a personnel file contains information that is highly intimate and embarrassing, that information must be disclosed if there is a legitimate public interest in it. See Open Records Decision Nos. 444 (1986) (the public has an obvious interest in the qualifications and performance of public employees), 441 (1986) (names of school district personnel who did not pass the TECAT examination may not be withheld).

The sample evaluation sent with your request does not invade the personal privacy of the employee, and you must release this information to the requestor. Because you have not submitted for review any of the remaining 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 by that section. If after reviewing the discussion of section 552.102 here, in Open Records Decision No. 441 (copy enclosed), and in the cited cases, you continue to believe that section excepts some of the requested information from disclosure, please submit the information you believe is excepted to this office for review.

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,



Margaret A. Roll  
Assistant Attorney General  
Open Government Section

MAR/PIR/rho

Ref.: ID# 28507

Enclosures: Submitted documents  
Open Records Decision No. 441

cc: Ms. Mary Green  
P.O. Box 104  
Mont Belvieu, Texas 77580  
(w/o enclosures)