



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 11, 1995

Mr. Joel V. Roberts  
City Attorney  
City of Odessa  
P.O. Box 4398  
Odessa, Texas 79760-4398

OR95-928

Dear Mr. Roberts:

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# 32128.

The City of Odessa (the "city") has received a request for information from the personnel file of a dispatcher relating to her job performance, investigations about her job performance, and disciplinary actions taken against her. You have submitted for our review performance evaluations and documents relating to disciplinary actions and have marked the particular information you believe may be withheld. You assert that this information is confidential under sections 552.101 and 552.102 of the Government Code and excepted from required public disclosure under section 552.111 of the Government Code.

Section 552.101 excepts "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 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.). 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 Texas 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 will consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102 together.

We have reviewed the information you have marked. All of the information relates to the job performance of the employee at issue. This information is of legitimate public interest and is not confidential under the doctrine of common-law privacy. See Open Records Decision No. 405 (1983). We note that you have marked the employee's social security number. This information is not necessarily confidential. 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)(viii)(I), 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). 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 ascertain whether the information is confidential under federal law.<sup>1</sup>

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In a recent opinion that reexamined section 552.111, this office concluded that it excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.* We have reviewed the marked information. It is generally factual.

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<sup>1</sup>The Seventy-fourth Legislature has significantly amended the Open Records Act effective September 1, 1995. See Act of May 29, 1995, H.B. 1718, 74th Leg., R.S. (to be codified at Gov't Code Ch. 552) (copy available from House Document Distribution). We do not address in this ruling whether these recent amendments to the Open Records Act will affect requests for this information that are made on or after September 1, 1995.

Moreover, it deals with routine administrative and personnel matters, and does not reflect the policymaking processes of the city. Therefore, we conclude that this information may not be excepted from required public disclosure under section 552.111. Thus, with the possible exception of the employee's social security number, the information you have submitted must be released in its entirety.

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,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/MRC/rho

Ref.: ID# 32128

Enclosures: Submitted documents

cc: Gary Newsom  
Editor  
Odessa American  
P.O. Box 2952  
Odessa, Texas 79760-2952  
(w/o enclosures)