



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 25, 1996

Ms. Margaret Stevens  
Assistant City Attorney  
City of Galena Park  
P.O. Box 46  
Galena Park, Texas 77547

OR96-1017

Dear Ms. Stevens:

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# 100062.

The City of Galena Park (the "city") has received a request for the personnel files of two city employees. You have submitted copies of the requested documents and claim that they are excepted from required public disclosure pursuant to section 552.102 of the Government Code.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld under common-law privacy only if the information is highly intimate or embarrassing and it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)).

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). 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 excepted from public disclosure. See Open Records Decision No. 444 (1986) at 4; see also Open Records Decision No. 230 (1979)

(concluding that predecessor to § 552.102 does not except from public disclosure investigative report regarding allegations of misuse of school district employees and materials).

Information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. For example, lists of mandatory Employee Retirement System contributions, information indicating whether an employee has declined all state funded insurance coverage, and beneficiaries of state funded life insurance coverage are subject to disclosure under the Open Records Act. However, certain information is protected from disclosure as it relates to employees' personal financial decisions to allocate portions of their compensation to optional benefits, and it involves no state funding. Optional benefits reflected in the records at issue include participation in participation in deferred compensation plans; and purchase of optional life, accident, dependent life or disability insurance. Open Records Decision No. 600 (1992). While basic information about enrollment in a state funded insurance plan is public, information about the particular insurance carriers selected and notification of changes in primary physician by employees is not. Additionally, information relating to employee dependents and beneficiaries of optional insurance coverage is excepted from disclosure by a common-law right of privacy. *Id.* at 10. Finally, financial information such as that relating to alternate sources of income, credit history, mortgage payments, and assets are generally protected under common-law privacy. Open Records Decision No. 373 (1983) at 3; *see also* Open Records Decision Nos. 626 (1994), 545 (1990). You must withhold these types of information.

The documents at issue include certain information regarding the medical condition of employees. Some of this information is excepted from disclosure under common-law privacy. Open Records Decision No. 343 (1982) (concluding that certain medical information, not excepted by Medical Practice Act, V.T.C.S. art. 4495b, may be withheld under constitutional or common-law right of privacy: *e.g.*, information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress). You must withhold these types of information.

Some of the information is confidential by statute in conjunction with section 552.101 of the Government Code, which excepts from required public disclosure information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. The submitted documents contain copies of Employee's Withholding Allowance Certificates, Form W-4 of the Internal Revenue Service, which have been completed by employees. These are excepted from disclosure by title 26, section 6103(a), of the United States Code. Open Records Decision No. 600 (1992) at 8-9. Therefore, you must withhold this information.

Social security numbers may also be confidential under federal law. Amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), incorporated into the Open Records Act by section 552.101, make confidential social security numbers obtained or maintained by authorized persons pursuant to any provision of law enacted *on*

*or after October 1, 1990.* Open Records Decision No. 622 (1994) at 2-3. Thus, if social security numbers found in the requested information were obtained or maintained pursuant to any such provision of law, the numbers are confidential and may not be publicly disclosed.

The submitted documents include records of on-the-job injuries. Medical records created by or under the supervision of a physician or maintained by a physician are excepted from disclosure under section 5.08(b) of article 4495b, V.T.C.S., the Medical Practice Act. Open Records Decision No. 324 (1982). These records may be released only in accordance with the Medical Practice Act. Information obtained by the city about the medical condition or history of an employee is confidential under the Americans with Disabilities Act. 42 U.S.C. § 12112 (d)(3)(B). *See* Open Records Decision No. 641 (1996).

Certain other information must be withheld under section 552.117 of the Government Code. Sections 552.024 and 552.117 of the Government Code were amended by the Seventy-Fourth Legislature to include social security numbers and information revealing whether a government employee has family members. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 5, 9, 1995 Sess. Law Serv. 5127, 5130, 5132. In pertinent part, section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether the following persons have family members: all peace officers, as defined by article 2.12 of the Code of Criminal Procedure; security officers commissioned under Education Code section 51.212; and all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, if the city employees have made the election under section 552.024 of the Government Code to keep that information confidential, section 552.117 requires that the city redact that information prior to releasing other information. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address, telephone number, social security number, or family information of an official or employee who made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. The submitted files contain no notice pursuant to section 552.024 that the employees wish their home addresses and telephone numbers withheld. If notice was not provided prior to this open records request, the information must be released, unless any social security number is protected from disclosure by federal law as described above.<sup>1</sup>

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<sup>1</sup>We have marked those types of information that must be withheld under section 552.101 and 552.102. Except as noted above, you may not withhold information under sections 552.101 and 552.102. Please note, however, that we did not mark for withholding information that may be excepted from disclosure under section 552.117 of the Government Code or social security numbers that may be protected by federal law. If such information is indeed confidential under those provisions, you must withhold that information wherever it occurs in the personnel files.

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 any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID# 100062

Enclosures: Marked documents

cc: Mr. C. David Taylor  
Editor, Galena Park Tribune  
P.O. Box 611  
Galena Park, Texas 77547  
(w/o enclosures)