



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1996

Mr. Robert A. Schulman
Schulman, Walheim, Heidelberg & Acevedo, Inc.
745 E. Mulberry, Suite 700
San Antonio, Texas 78212

OR96-1056

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40024.

The Alamo Community College District (the "district") received a request for the most recent audit report of accounts concerning Koehler Cultural Center and the audit working papers that support this report. You contend that certain highlighted information in the documents submitted to this office must be withheld under section 552.101 of the Government Code.¹ We have considered your arguments and have reviewed the documents at issue.²

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. You suggest that disclosure of the requested information would violate certain individuals' common-law and constitutional right to privacy and that certain individuals are "entitled to anonymity on the basis of the informer's privilege," as incorporated by section 552.101.

¹In correspondence to this office dated April 18, 1996, you also raised section 552.111 as an additional exception to disclosure. However, this exception was not timely raised. *See* Gov't Code § 552.301(a) (governmental body must state exceptions that apply not later than 10th calendar day after date of receiving written request). The district received the request on April 3, 1996. Therefore, we do not consider your claim of exception under section 552.111.

²You have submitted representative samples of some of the information responsive to this request. In reaching our conclusion here, we assume that the "representative samples" of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). 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.

Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional privacy doctrine is far narrower than that under the common law; the material must concern "the most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

You first suggest that disclosure of the name of the "principal individual involved . . . in the context of an investigation in which questions have been raised about the proper management of the accounts may be a private and potentially embarrassing fact." This office has previously held that a common-law right of privacy does not protect facts about a public employee's conduct on the job or complaints made about his or her performance. *See* Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). We also find no information which concerns "the most intimate aspects of human affairs." We conclude that neither the common-law or constitutional right to privacy protects any references to this person and that this information may not be withheld under section 552.101 of the Government Code.

We note that you highlighted the names of other district employees and assume that you also intended to raise the common-law or constitutional right to privacy on these employees' behalf. However, we find no information with respect to these other employees which is highly intimate or embarrassing or which concerns "the most intimate aspects of human affairs." We conclude that neither the common-law or constitutional right to privacy protects any references to these individuals and that this information may not be withheld under section 552.101 of the Government Code.

You also suggest that renters of the Koehler Cultural Center may have common-law or constitutional privacy rights which should be protected. However, having reviewed the documents submitted to this office, with the exception of certain cancelled checks, we find no information which is highly intimate or embarrassing or which concerns "the most intimate aspects of human affairs." We conclude that neither the common-law or constitutional right to privacy protects the information in the submitted documents concerning these individuals.

With regard to the cancelled checks, financial information concerning an individual is in some cases protected by a common-law right of privacy. *See* Open Records Decision Nos. 545 (1990), 523 (1989). A previous opinion of this office states that "all financial information relating to an individual . . . ordinarily satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 (1983) at 3. As we believe that no legitimate public interest is served by releasing these cancelled checks, we conclude that the cancelled checks must be withheld based upon the common-law right to privacy and section 552.101 of the Government Code.

You also assert that the identities of certain individuals should be withheld under the "informer's privilege" aspect of section 552.101. The Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5. Where statements evidence no wrongdoing or violation of law, they are not protected by the informer's privilege. Open Records Decision No. 549 (1990); *and see* Open Records Decision No. 515 (1988) (where letters do not describe conduct which is clearly criminal, they are not excepted by the informer's privilege). The informer's privilege does not apply to information that does not describe illegal conduct, *see* Open Records Decision No. 515 (1988) at 5, and protects the content of the communication only to the extent that it identifies the informant. *Rovario v. United States*, 353 U.S. 53, 60 (1957). Having reviewed the documents submitted to this office, we find no information which describes illegal conduct or which indicates that these individuals were reporting a violation of a civil or criminal law. Consequently, we conclude that the informer's privilege may not be used to withhold any of the requested information.

In summary, with the exception of the cancelled checks, none of the information submitted to this office for review may be withheld under section 552.101 of the Government Code. However, we did find some information contained in the submitted documents which the district may be required to withhold from public disclosure pursuant to section 552.117. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 prior to the time this 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 5.³ We have tagged several documents which contain the type of information which the district may be required to withhold under section 552.117.

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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 40024

³Even if any particular current or former employee or official failed to request that this information be kept confidential under section 552.024, federal law may prohibit disclosure of an employee's social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to 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). We are unable to determine whether the social security numbers 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.

Enclosures: Submitted documents

cc: Mr. Clay Reeves
Editor
The Ranger
San Antonio College
1300 San Pedro Avenue
San Antonio, Texas 78212
(w/o enclosures)