



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1996

Mr. Mark S. Houser
Vial, Hamilton, Koch & Knox, L.L.P.
1717 Main, Suite 400
Dallas, Texas 75201

OR96-1103

Dear Mr. Houser:

You have asked 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# 37517.

The City of Highland Village (the "city") received a request for the personnel file of a police officer, including information concerning any promotions, awards, training, reprimands, complaints, and disciplinary actions. You contend that the information at issue is excepted from disclosure pursuant to sections 552.101, 552.102, 552.103(a), 552.117, and 552.119 of the Government Code.

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city has shown that litigation is pending. You have provided this office information showing that the city has been sued by the police officer for, among other things, employment discrimination. Our review of the records at issue, which were submitted to this office, shows that they are related to the pending litigation. You have thus shown the applicability of section 552.103(a).

However, absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest

exists with respect to that information.¹ Open Records Decision No. 349 (1982). Assuming that the police officer who is the opposing party in this litigation has already had access to some of the information at issue, we will address your other arguments against disclosure.

Section 552.117 provides that a peace officer's home address, home telephone number, social security number, or information that reveals that the individual has family members are confidential. This information must therefore be redacted from the information at issue. We agree that the photographs of the police officer contained in his personnel file are also protected from disclosure under section 552.119. Open Records Decision No. 502 (1988) (section 552.119 generally prohibits release of peace officers' photographs).

You assert that records containing medical, financial, and other information is excepted from disclosure on the basis of common-law privacy as incorporated by sections 552.101 and 552.102 of the Government Code. The test to determine whether information is private and excepted from disclosure under either section 552.101 or section 552.102 is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.).

The public has a legitimate interest in the job qualifications and performance of public employees. See Open Records Decision No. 470 (1987) at 5. In the past, this office has concluded that common-law privacy does not protect information about the educational training of an applicant or employee; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and telephone numbers of character references; and information about job performance. See generally Open Records Decision No. 455 (1987) at 8.

However, as we explained to you in Open Records Letter No. 95-541 (1995) (copy enclosed) there is no legitimate public interest in certain types of information concerning public employees, such as certain financial information. See Open Records Decision No. 600 (1992) at 9-10. We have marked a sample of some of the documents in the personnel file to show the types of information that must be withheld from disclosure under common-law privacy. You may also use, as a guide to what types of information may be protected by privacy, the personnel file documents we marked for privacy and returned to you in connection with Open Records Letter No. 95-541 (1995).

¹We note that the applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3.

Section 552.101 also excepts from disclosure information made confidential by federal law. The medical information you have specifically asked about is confidential pursuant to 42 U.S.C. § 12112(d)(3)(B).² Open Records Decision No. 641 (1996). Form I-9 regarding citizenship and residency status may be released only in compliance with federal laws and regulations concerning employment verification. See 8 U.S.C. § 1324a(b)(5). Some types of information concerning veterans is also confidential. See 38 U.S.C. § 5701.

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 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 Records Section

RHS/ch

Ref.: ID# 37517

Enclosures: Marked documents
Open Records Letter No. 95-541 (1995)

cc: Mr. Gregory L. Ward
North Texas Investigations, Inc.
P. O. Box 117855
Carrollton, Texas 75011
(w/ enclosure Open Records Letter No. 95-541 (1995))

²The personnel file contains some medical inquiry information we marked as confidential under common-law privacy that is not made confidential under the Americans with Disabilities Act of 1990, because the information was compiled prior to the effective date of the Title I provisions concerning confidentiality of medical information.

