



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1996

Ms. Amy Motes McCullough
City Attorney
City of Pearland
3519 Liberty Drive
Pearland, Texas 77581-5416

OR96-1178

Dear Ms. Motes McCullough:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40291.

The City of Pearland (the "city") received a request for "[a]ny documents submitted by Joe Gonzalez or the The Management Connection." You claim that in response to personnel problems at a city department, training and management skills sessions were set up for the department's employees, and consequently a "Proposal for the City of Pearland" (the "Proposal") was created. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claimed and have reviewed the document at issue.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law, including information made confidential by judicial decision. Section 552.101 also encompasses common-law and constitutional privacy. Under common-law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101, in conjunction with the common-law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

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, which are not applicable here, 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 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)).

In the past, this office has concluded that the doctrine of common-law privacy does not protect an applicant's or employee's educational training; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performance or ability; birth dates; height; weight; marital status; and social security numbers. *See generally* Open Records Decision No. 455 (1987) at 8.

You seek to withhold the requested information to protect the privacy interests of individuals who participated in a conference between city employees in response to personnel problems that surfaced in the city's Economic Development Corporation department. After a review of the submitted Proposal, we disagree that matters disclosed at the conference contain highly intimate and embarrassing information about a person's private affairs. However, we have marked other information in the submitted records which are excepted from disclosure, because they either make specific references to prescribed medication or are highly intimate and embarrassing and there is no legitimate public interest in their disclosure. *See generally* Open records Decision 455 (1987). Accordingly, the city may not withhold the requested information, except for the marked sections, under the privacy provisions of section 552.101 of the Government Code.

In addition, the submitted records contain information which reveals whether that person has family members. Sections 552.117 and 552.024 of the Government Code provide that a current or former public employee can opt to keep private his or her home address, home telephone number, social security number, and *information that reveals whether that person has family members*. You must withhold this information for those individuals who, as of the time of the request for the information, had elected to keep the

information private. Open Records Decision Nos. 530 (1989) at 5, 482 (1987) at 4, 455 (1987). You may not, however, withhold the information of a current or former employee or official who made the request for confidentiality under section 552.024 after 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. We have marked a sample of the kind of information that must be withheld if the official made the election not to allow public access to the information.

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,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/cbh

Ref.: ID# 40291

Enclosures: Marked documents

cc: Ms. Gina Gomez
2206 E. Broadway
Pearland, Texas 77581
(w/o enclosures)