



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 17, 1997

Mr. Curtis W. Collum
Rose City Attorney
1140 North Main, Suite C
Vidor, Texas 77662-3739

OR97-0542

Dear Mr. Collum:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 104512.

The City of Rose City (the "city"), which you represent, received an open records request for, among other things, documents reflecting "the reason or reasons why [the city marshal] was placed on probation by the city of Rose City." The same requestor has also sought the personnel files of the city marshal and deputy marshal. You contend the requested information is excepted from required public disclosure pursuant to the statutory predecessors of sections 552.101, 552.102, and 552.103 of the Government Code.²

Although you contend that the requested information is excepted from public disclosure pursuant to the "litigation" exception, section 552.103, you did not explain to our office the reasons that exception applies. *See* Gov't Code § 552.301(b). Pursuant to section 552.303(c) of the Government Code, on February 12, 1997, our office notified you by letter that you had failed to submit this information as required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the requested information is public information.

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²Because you do not argue that other requested information is excepted from required public disclosure, we assume the city has made the other information available to the requestor.

You did not provide our office with the information that was requested in our February 12, 1997 notice to you. We therefore conclude that you have waived the protection of section 552.103 and accordingly this office will only consider the applicability of the other two exceptions you have raised.

You first contend that because the reasons the city marshal was placed on probation were discussed by the city counsel during an executive session, the requested information is confidential under the Texas Open Meetings Act, chapter 551 of the Government Code. Section 551.074 of the Government Code allows the city to consider an employee's evaluations and terms of employment during an executive session unless the employee specifies otherwise, while section 551.104(c) makes the certified agendas of executive sessions confidential. Although certified agendas and tape recordings of executive sessions are confidential under section 551.104(c), that section applies *only* to the certified agendas and tape recordings; it does not apply to information that a city employee prepares before or after the executive session. *See* Open Records Decision No. 485 (1987) at 4-5. None of the records you have submitted to this office consist of information made confidential under section 551.104(c) of the Government Code. Consequently, the city may not withhold any of the documents submitted to this office on these grounds.

We next address the applicability of section 552.102 of the Government Code. Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

The information at issue pertains to the marshal's and deputy's actions as public servants, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). On the other hand, a small portion of the information at issue does reveal "intimate details of a highly personal nature" regarding another city employee and as such must be withheld from the public unless the employee consents to the release. *See generally* Open Records Decision No. 470 (1987) (certain health related information protected by privacy). We have marked the information coming within common-law privacy. The city must release the remaining information in its entirety to the requestor.

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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/rho

Ref: ID# 104512

Enclosures: Marked documents

cc: Mr. Jerry Jordan
The Examiner
470 Orleans St., Suite 1006
Beaumont, Texas 77701
(w/o enclosures)

