



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 22, 1997

Ms. Stephanie F. Lippard  
Legal Assistant  
Fielding, Barrett & Taylor, L.L.P.  
3400 Bank One Tower  
500 Throckmorton Street  
Fort Worth, Texas 76102-3821

OR97-1181

Dear Ms. Lippard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106434.

The City of Southlake (the "city"), which you represent, received a request for:

[a]ll information (records) pertaining to previous disciplinary actions and complaints, as well as personnel files that relate to previous employment of Officer G. Music and the other 2 officers and 2 EMTs and a communications officer involved in a traffic citation issued on 3/9/97.

You state that the city has released some of this information to the requestor. However, you contend that portions of the responsive documents are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 articulated 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.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

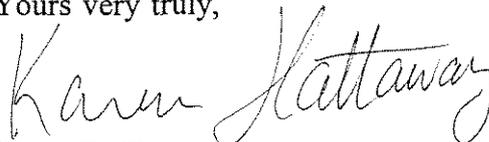
For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

You contend that employees of the city's public safety department have a privacy interest in "complaints regarding their performance and subsequent disciplinary action." On the contrary, such information is of legitimate public concern and is not protected by the common-law right to privacy. Open Records Decision Nos. 473 (1987) (performance evaluations of public employees may not ordinarily be withheld under section 552.102), 470 (1987) (legitimate public interest in job qualifications of public employees). On the other hand, the submitted documents do contain some personal information that is protected by the common-law right to privacy. We have marked this information accordingly. The city must withhold only the marked information from disclosure under sections 552.101 and 552.102 of the Government Code.

We have also marked information in one of the submitted documents that reveals a police officer's home address and telephone number, social security number, and information about his family members. Section 552.117(2) excepts such information about a police officer from disclosure. Thus, the city must withhold this information from disclosure. The information that we have not marked as protected must be released 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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/alg

Ref: ID# 106434

Enclosures: Marked documents

cc: Mr. and Mrs. Wally Reder  
1994 Peytonville Avenue  
Southlake, Texas 76092  
(w/o enclosures)

100

