



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 9, 1997

Mr. Jim Thorp  
County Treasurer  
Parker County  
1112 Santa Fe  
Weatherford, Texas 76086

OR97-1552

Dear Mr. Thorp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106930.

The Parker County Treasurer (the "Treasurer") received a request from the Parker County Attorney's office for all payroll records pertaining to a specific individual from the fiscal year of 1987 to April 10, 1997. The request is not accompanied by a subpoena and appears to be a request for the voluntary submission of information to the County Attorney's office. The Treasurer seeks to treat the request as an Open Records request and accordingly submits representative samples of the records and asserts that the material is excepted from disclosure under section 552.101 and section 552.102 of the Government Code.<sup>1</sup>

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in section 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. 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.).

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative samples" of records submitted to this office is 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.

We note that certain of the records at issue relate to the job performance and work behavior of a public employee. There is a legitimate public interest in the qualifications of a public employee and how he or she performs job functions. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees), 423 (1984) at 2 (scope of public employee privacy is narrow).

In addition, where the information reflects a transaction between the employee and the public, that information is ordinarily discloseable. Open Records Decision Nos. 600 (1992) (information about public employee's participation in a group insurance program, retirement benefits beneficiaries, tax exempt reimbursement accounts, and direct deposit), 545 (1990) (information about a public employee's participation in a deferred compensation plan). However, certain financial information relating to individual employees is protected by common-law privacy. Open Records Decision No. 373 (1983). Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee's mandatory contributions to the county retirement system. Open Records Decision No. 600 (1992). On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the county. *Id.* It is not apparent from the submitted documents whether the retirement plan is mandatory or voluntary and we would caution you to evaluate the data before releasing it. *See Gov't Code § 552.352.*

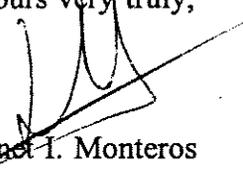
We observe that medical records or communications between a physician and patient are confidential under the Medical Practice Act, V.T.C.S. art. 4495b, § 5.08 (b), (c), and as such those records may be disclosed only as permitted under section 5.08(b). We have marked the two records which appear to fall within section 5.08(b) under the Medical Practice Act.

We also note that some medical records are from Campbell Memorial Hospital. Subchapter G of Chapter 241 of the Health and Safety Code provides for the disclosure of health care information in the possession of hospitals. Section 241.152(a) of the Health and Safety Code provides that "a hospital or an agent or employee of a hospital may not disclose health care information about a patient to any person other than the patient without the written authorization of the patient or the patient's legally authorized representative." "Health care information" means "information recorded in any form or medium that identifies a patient and relates to the history, diagnosis, treatment, or prognosis of a patient." Health & Safety Code § 241.151(1). Section 241.153(3) provides several instances in which a patient's health care information may be disclosed without the patient's written authorization. One such instance is if the disclosure is to "a federal, state, or local government agency or authority to the extent authorized or required by law." *Id.* § 241.153.(3). We assume that the health care information was released by Campbell Memorial Hospital to the county in compliance with this provision. There is no provision authorizing the department to re-release the health care information. Therefore, that information which we have marked remains confidential under section 241.152 of the Health and Safety Code and may be withheld under section 552.101 of the Government Code.

Additionally we note that 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, if the official, employee, or former employee has requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). The treasurer may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 at the time this request for the documents 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. However, we note that the particular employee whose records are requested made such a request on March 21, 1988. Thus, the pertinent information, some of which we have marked, which falls within the confidentiality provisions of section 552.117 must be withheld.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

  
Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/glg

Ref.: ID# 106930

Enclosures: Submitted documents

cc: Mr. M.W. Morgan  
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(w/o enclosures)

