



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 23, 1997

Mr. Russell Casselberry
City Attorney
City of Lamesa
601 South First
Lamesa, Texas 79331-6247

OR97-1686

Dear Mr. Casselberry:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108163.

The City of Lamesa (the "city") received a request for information concerning its drug-screening program. You state that the city has told the requestor that some of the requested information is available for him to pick up. However, you assert that information which shows which city employees have been randomly tested and how many times the employees have been tested is excepted from required public disclosure based on sections 552.101 and 552.102 of the Government Code. You are concerned that the release of the information will place the employees in a false light as a suspected drug user.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. The Texas Supreme Court has held that false-light privacy is not an actionable tort in Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994.). Additionally, the attorney general determined that the statutory predecessor to section 552.101 does not incorporate the common-law tort of false-light privacy. Open Records Decision No. 579 (1990). Thus, the information is not excepted from disclosure based on false-light privacy.

Section 552.101 also applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. 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 if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

The information does not identify a particular employee as having tested positive for drug use, but rather shows whether an employee was randomly chosen for testing on a particular date. We do not believe the information is highly intimate or embarrassing. Furthermore, the public has a strong interest in information concerning public employment. We, therefore, conclude that the information is not protected from disclosure based on the common-law right to privacy. See Open Records Decision No. 594 (1991).

We are resolving this matter with this 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 may 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/rho

Ref.: ID# 108163

Enclosures: Submitted documents

cc: Mr. Delwayne Hunter
Central Station Fire Department
307 North First Street
Lamesa, Texas 79331
(w/o enclosures)