



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 5, 1997

Mr. S. Stephen Hilmy
Attorney for Del Mar College
Gary, Thomasson, Hall & Marks
P.O. Box 2888
Corpus Christi, Texas 78403

OR97-2655

Dear Mr. Hilmy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111368.

Del Mar College (the "college"), which you represent, received a request for information concerning a grievance filed by the requestor against a former employee at the college. You state that you have furnished the requestor with all of the requested information except for the former employee's resignation letter. You assert that the resignation letter is protected by common-law privacy under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the 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 of the act.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

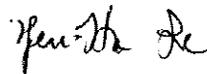
540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). We conclude that the resignation letter is not excepted by common-law privacy under sections 552.101 and 552.102. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for public employee's demotion, dismissal, or resignation). Therefore, except for the marked information discussed below, the resignation letter must be released.

We note that the letter contains some information that may be excepted from public disclosure by section 552.117. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or family member information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the family member information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee 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.

Therefore, if the former employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code, we believe that the college must withhold this information from required public disclosure pursuant to section 552.117. We have marked the kind of information that must be withheld if the former employee 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 111368

Enclosure: Marked document

cc: Mr. Jeffrey A. Stromer
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Tripoli, Iowa 50676
(w/o enclosure)