



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 19, 1998

Ms. Cathy Cunningham  
Senior Assistant City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75060

OR98-0486

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112568.

The City of Irving (the "city") received an open records request for thirteen categories of information. You assert that the information responsive to the first category, "[a]ny memos from the Assistant City Manager to the City Manager regarding the city taking direct control of the ICVB...", has been previously requested by this requestor. We have addressed this request in ruling number OR98-0485. Therefore, you should rely on ruling number OR98-0485 to determine whether to release information responsive to this category of the request, and we will not address such information in this ruling. You appear to assert that information responsive to the twelfth category, "memos regarding the dismissal of Michelle Mayberry, Joyce Gilmer, Judy Stewart, and Donna Taylor," is protected from disclosure under a right of privacy. You have submitted to our office for review documents responsive to this category of the request. You have released the remaining responsive information to the requestor. We will therefore consider your argument as to whether the submitted records are excepted from disclosure under a right of privacy.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. 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. 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 from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The records at issue relate to the job performance of public employees. There is a legitimate public interest in how a public servant conducts herself while on-duty and how she performs her 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). Therefore, the requested information may not be withheld under common-law privacy, and you must release it to the requestor.<sup>1</sup>

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 questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref: ID# 112568

Enclosures: Submitted records

cc: Mr. Sam Templeton  
Paragon News 15  
135 Houston Street  
Lewisville, Texas 75075  
(w/o enclosures)

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<sup>1</sup>We note that the submitted records contain the identity of a victim of alleged sexual harassment, and that such information is protected by the common-law privacy doctrine as applied in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) and *Industrial Foundation*. However, the alleged victim has filed a suit against the city for acts allegedly arising out of the sexual harassment. Therefore, her identity is no longer protected by a right to privacy. See *Star Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents that have been filed with court are generally considered public and must be released).