



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 11, 1998

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR98-1195

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# 114558.

The City of Irving (the "city") received an open records request for all depositions pertaining to a particular lawsuit in which the city was the defendant. You have informed this office that the lawsuit has recently been settled.¹ You contend that portions of the requested depositions are subject to a protective order and therefore must be withheld from the public. You also suggest that the same or similar portions of the depositions are excepted from required public disclosure pursuant to common-law privacy.

You have submitted to this office a copy of the protective order, which provides in pertinent part:

1. Use. Any and all information, documents, *deposition testimony*, interrogatory responses, and materials covered by the Protective order . . . shall be used solely for the prosecution or defense of the instant action and for no other purposes or publication, whether directly or indirectly and shall not be disclosed, delivered or their existence made known or exhibited to any persons except in accordance with the provisions of this Order.

¹The city also received a subsequent open records request for the final settlement of that lawsuit. This office will address whether the city may release the final settlement in a separate ruling.

3. Application. The following material shall be deemed “Confidential Information” and within the scope and protection of this Protective Order whether marked as “confidential” or unmarked: (a) written evaluations of current and former ICVB employees contained in [the plaintiff’s] reader file; (b) all financial or salary information relating to [the plaintiff] or Tall Results; (c) all information relating to [the plaintiff’s] emotional, mental, or physical condition . . .; and (d) documents produced pursuant to request numbers three and four of the deposition notice for Doug Bales.

....

IT IS FURTHER ORDERED that upon final termination of the instant action, all Confidential Information, and copies thereof, *shall be returned to the respective Parties’ counsel, within twenty (20) days of receiving written notice requesting return of such Confidential Information*; provided however, that the Parties have no duty to return any Confidential Information which has been introduced as an exhibit at the trial of this action. [Emphasis added.]

Section 552.107(2) of the Government Code requires that the city withhold all information made confidential by court order. Although this office has previously held that after a suit has been dismissed, a protective order issued therein no longer acts to except information from public disclosure, Open Records Decision No. 309 (1982), in this instance the protective order you submitted to this office specifically provides for the disposition of “confidential information” upon “final termination” of the legal action. Because the protective order continues to govern the release of the “confidential information” contained in the depositions, the city must act in accordance with the provisions of the order.

You also contend that portions of the depositions may be withheld from the public pursuant to common-law privacy, as incorporated into section 552.101 of the Government Code.² See generally *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). It appears to this office, however, that much of the information that may come within the protection of common-law privacy is intermingled or co-extensive with the “confidential information” coming within the terms of the protective order.³

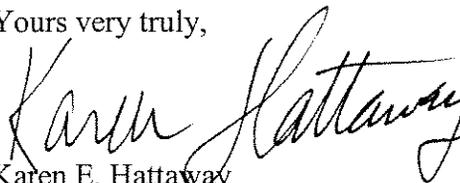
²Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

³We also note that some of this same information would be deemed confidential under section 552.117(1) of the Government Code, which requires the city to withhold its employees’ and former employees’

It is unclear to this office the extent to which the court intended to make "confidential" the information at issue under the terms of the protective order; this office therefore is hesitant to substitute its judgment for that of the court. *Cf.* Open Records Decision No. 560 (1990) at 3 (attorney general does not construe court orders in opinion process). Because counsel for the plaintiff has requested that all "confidential information" held by the city be returned in accordance with the provisions of the protective order, we advise the city to act in compliance with the terms of the protective order. After doing so, if the city believes that any of the remaining information in the depositions is deemed confidential under common-law privacy or other law, the city should submit only those portions of the depositions to this office for a ruling and release all other portions 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 questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RWP/ch

Ref.: ID# 114558

Enclosures: Submitted documents

cc: Ms. Rachel Horton
Irving News
1000 Avenue H
Arlington, Texas 76011
(w/o enclosures)

home address, home telephone number, social security number, and any information revealing whether the employee has family members, but only if the employee has elected to keep this information confidential in accordance with section 552.024 of the Government Code.