



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 12, 1998

Mr. James T. Jeffrey, Jr.  
Remington & Jeffrey  
1306 W. Abram  
Arlington, Texas 76013-1711

OR98-1445

Dear Mr. Jeffrey:

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# 115699.

The City of Cockrell Hill (the "city") received a request for information concerning city council meetings pertaining to the employment of Bob or Elizabeth Johnson. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102 and 552.103 of the Government Code. You also aver that the request is overly broad, making it difficult for the city to respond to the requestor. We have considered the exceptions you claim and reviewed the submitted information.

A governmental body may ask a requestor to clarify a request for information if the request is unclear. Gov't Code § 552.222(b). In addition, a governmental body may discuss with the requestor how the scope of the request might be narrowed. *See id.* Thus, it is appropriate for the city to discuss the request with the requestor in this instance.

You have submitted for our review copies of the notice and minutes of city council meetings. You assert that this information is excepted from disclosure based on sections 552.102 and 552.103 of the Government Code.

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 of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). Section 552.101, which excepts from disclosure information that is confidential by law, incorporates the common-law right to privacy. 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 Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We conclude that section 552.102 is inapplicable in this instance.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

The minutes of open meetings are made public by statute. Gov't Code § 551.022. Likewise, the notice of all meetings must be publicized. *See id.* 551.041. Information made public by statute may not be withheld pursuant to section 552.103. *See Open Records Decision Nos. 162 (1977); 146 (1976)*. Thus, the city may not withhold the notices and minutes from public disclosure based on section 552.103. *See Open Records Decision No. 221 (1979)*.

As for the remainder of the requested information, we note that a certified agenda or tape recording of an executive session is confidential pursuant to Government Code section 551.104 unless a court rules otherwise in an action filed under the Open Meetings Act,

chapter 551 of the Government Code.<sup>2</sup> You have not submitted any information to this office other than the notices and minutes. We further note, however, that information may not be withheld from disclosure under the Open Records Act simply because it was considered in a closed executive sessions. *See* Open Records Decision No. 485 (1987).

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,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/ch

Ref.: ID# 115699

Enclosures: Submitted documents

cc: Bob and Elizabeth Johnson  
P.O. Box 775  
Hurst, Texas 76053  
(w/o enclosures)

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<sup>2</sup>This office lacks authority to review certified agendas or tapes of executive sessions to determine whether they may be withheld under the Open Records Act. *See* Open Records Decision No. 495 (1988).