



February 26, 1999

Mr. Brendan Hall
City Attorney
City of Harlingen
118 E. Tyler
Harlingen, Texas 78551

OR99-0570

Dear Mr. Hall:

On behalf of the City of Harlingen (the "city"), 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# 123751.

You have submitted an open records request for the 1997 and 1998 performance evaluations of a former employee and information concerning Joe LaBeau's review of said employee. You assert that the submitted information is excepted from required public disclosure by sections 552.101, 552.102, and 552.103 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

We note that the information at issue was the subject of a prior ruling from this office, Open Records Letter No. 98-2699 (1998), which was affirmed by Open Records Letter No. 99-0481 (1999). The prior rulings concerned the personnel file of the employee who is the subject of the present request. Yet, you ask, once again, for a decision from this office on the same information. As we concluded in Open Records Letter No. 98-2699, although the city may reasonably anticipate litigation, once the opposing party has seen or had access to the requested information, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). The opposing party has had access to all of the submitted information, which is information from his personnel file. Thus, there is no justification for now withholding such information from the requestor pursuant to section 552.103(a), except for information which is confidential by law.

As we also ruled in Open Records Letter No. 98-2699, neither section 552.101 nor 552.102 protects the submitted information as private. Information about a public employee's job performance and work behavior is commonly held not to be excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 470 at 4 (1987) (public

has legitimate interest in job performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Furthermore, the reasons for a public employee's demotion, dismissal, or resignation are of legitimate public interest and therefore public. Open Records Decision Nos. 444 (1986), 329 (1982), 278 (1981).

You must, however, withhold the former employee's social security number under section 552.117 if the former employee elected to withhold his social security number as required by section 552.024. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the city may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ch

Ref.: ID# 123751

Enclosures: Submitted documents

cc: Ms. Gina Perales
Valley Morning Star
1310 S. Commerce
Harlingen, Texas 78550
(w/o enclosures)