



April 16, 1999

Mr. Rene Guerra  
Criminal District Attorney  
Hidalgo County  
Hidalgo County Courthouse  
Edinburg, Texas 78539

OR99-1034

Dear Mr. Guerra:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 125223.

The Hidalgo County Sheriff's Office (the "county") received a request for the personnel file of a particular employee. You have released some of the requested information. You assert that the remaining requested information is excepted from public disclosure by section 552.102 of the Government Code.

Section 552.301(a) of the Government Code provides in part that:

A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

In this case, this office did not receive the request for a decision within the 10 business day period mandated by section 552.301(a). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this

presumption. See *Hancock*, 797 S.W.2d at 381-82 (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The presumption of openness is overcome by a showing that the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 (1977). Because the submitted information is confidential by law and affects third party interests, we will address your arguments against public disclosure.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 19A of article 4413(29cc) of the Texas Civil Statute, which governs the release of polygraph examinations, reads in pertinent part as follows:

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person . . . or governmental agency that requested the examination;
- (3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;
- (4) other polygraph examiners in private consultation, all of whom will adhere to this section; or
- (5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

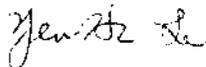
We have marked the information that must be withheld under these provisions.

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 Texas 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 Government Code. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, 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 at 1 (1992).

We have reviewed the submitted information and conclude that none of the information is protected by privacy under sections 552.101 and 552.102. The public has a legitimate interest in having access to information concerning the performances of governmental employees, “particularly employees who hold positions as sensitive as those held by members of a sheriff’s department.” Open Records Decision No. 444 (1986); *see also* Open Records Decision No. 329 (1982) (reasons for public employee’s demotion, dismissal, or resignation are of legitimate public interest). Moreover, information is not confidential under the act simply because the party submitting it anticipates or requests that it be kept confidential. Open Records Decision No. 479 (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 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/nc

Ref.: ID#125223

Encl.:       Marked documents

cc:       Mr. Paul Neimann  
          The Monitor  
          P.O. Box 760  
          McAllen, Texas 78501  
          (w/o enclosures)