



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2010

Mr. Warren M.S. Ernst
Chief of the General Counsel Division
City of Dallas
1500 Marilla Street
Dallas, Texas 75201

OR2010-07086

Dear Mr. Ernst:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 379772.

The City of Dallas (the "city") received a request for the most recent evaluations of municipal judges and all evaluations completed by a named individual. You state you have released some information. You claim a portion of the requested information is not subject to the Act. You claim that some of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

The Act applies to information that is "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body." Gov't Code § 552.002(a)(1). However, a "governmental body" under the Act "does not include the judiciary." *Id.* § 552.003(1)(B). Information that is "collected, assembled or maintained by ... the judiciary" is not subject to the Act but is instead "governed by rules adopted by the Supreme Court of Texas or by other applicable laws and rules." Gov't Code § 552.0035(a); *cf.* Open Records Decision No. 131 (1976) (applying statutory predecessor to judiciary exclusion under section 552.003(1)(B) prior to enactment of section 552.0035); Tex. R. Jud. Admin. 12 (public access to judicial records). You state the evaluations completed by a named individual are judicial records. Based on your representation, we find the information at issue is not subject to the Act. *See* Open Records Decision No. 646 at 4

n. 3 (1996) (citing Open Records Decision No. 236 at 2-3 (1980)). Therefore, the city need not release the evaluations completed by the named individual.¹

We now address your arguments for the submitted information. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. However, this office has also found information pertaining to the work conduct and job performance of public employees is generally a matter of legitimate public interest and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 473 at 3 (1987) (fact that public employee receives less than perfect or even very bad evaluation not protected by common-law privacy), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find the submitted information is a matter of legitimate public interest. Accordingly, no portion of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions against disclosure, the submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

¹ We note that records of the judiciary also may be public under other sources of law. *See* Gov't Code § 29.007(d)(4) (complaints filed with municipal court clerk); *id.* § 29.007(f) (municipal court clerks shall perform duties prescribed by law for county court clerk); Local Gov't Code § 191.006 (records belonging to office of county clerk shall be open to public unless access restricted by law or court order); *see also Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57 (Tex. 1992) (documents filed with courts are generally considered public and must be released); Attorney General Opinions DM-166 (1992) at 2-3 (public has general right to inspect and copy judicial records), H-826 (1976); Open Records Decision No. 25 (1974).

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Schulz", written in a cursive style.

Chris Schulz
Assistant Attorney General
Open Records Division

CS/rl

Ref: ID# 379772

Enc. Submitted documents

cc: Requestor
(w/o enclosures)