



THE ATTORNEY GENERAL OF TEXAS

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July 21, 1977

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Open Records Decision No.169

Re: Whether home addresses
of public employees are
public under Open Records
Act when those employees
have objected to disclosure.

Gentlemen:

You request our decision pursuant to section 7 of the Texas Open Records Act, article 6252-17a, V.T.C.S., concerning the release of the home addresses of public employees who have objected to disclosure of such information. You contend that in such a case home address information is excepted from required public disclosure under section 3(a)(2) as "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In the alternative, you contend that at least some of the employees have demonstrated a substantial privacy interest in the information by taking action to restrict public access to their addresses. See Open Records Decision No. 123 (1976).

Upon receipt of requests for lists of employees and their addresses, both the City Public Service Board of the City of San Antonio and the Police Department of the City of El Paso polled the employees involved as to whether they wished to assert a privacy interest in their home address, and if so, asked them to submit facts or circumstances which would demonstrate a substantial privacy interest in such information. Approximately 90 percent of the El Paso police officers (450 of 495 surveyed) responded that they objected to disclosure, and approximately 30 percent of the CPSB employees (950 of 2750 surveyed) replied that they objected to disclosure. You have submitted all 1400 responses for our consideration. A recurring theme among the responses was a fear of harassment or reprisal through criminal acts by those persons against whom the employee had to deal adversely in the course of duty, as by terminating

utility service by CPSB employees, or by arrest by the policemen. Another concern expressed by those working night shifts was a desire not to have their sleep disturbed by telephone calls or home solicitation. Another was a general objection to unsolicited telephone calls, home visits, or mail. Some cited as reasons for not wanting to be disturbed the fact that aged or infirm family members living with them are unable to answer the telephone or doorbell with ease. Others objected because they live alone, or live with their parents. Many objected because of unarticulated "personal" or "private" reasons, or did not state any reason.

Actions taken by some employees to restrict access to their addresses included having an unpublished telephone listing, or listing the phone in the spouse's or parents' name, or listing by initials only, the use of a post office box for mail, living in a rural area and having mail box at a great distance from home, posting of no solicitation signs at home, not having address printed on checks, cautioning family and friends not to give out address indiscriminately, and combinations and variations of the above.

The names, sex, ethnicity, salaries, titles and dates of employment of all public employees are expressly made public by section 6(2) of the Open Records Act. It is clear that, absent any "special circumstances" which would justify nondisclosure, a mere desire for anonymity does not render disclosure of a public employee's address a "clearly unwarranted invasion of personal privacy" within section 3(a)(2) of the Act. Open Records Decision No. 54 (1974). In Open Records Decision No. 123 (1976) at 5, however, we said:

When a public employee seeks to establish a substantial privacy interest in his or her home address, we believe facts showing a consistent history of affirmative action to restrict public access to such information, as by maintaining an unlisted phone number, using a post office box for personal mail, and taking similar precautions, would be relevant to the governing body's determination, along with statements of the special circumstances which would make disclosure a clearly unwarranted invasion of personal privacy.

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The facts of the present cases make clear the need for a more detailed explication of that standard.

The fact of public employment may in itself narrow an employee's right of privacy to a lesser scope than that of a private citizen. One Texas court has said in reference to a policeman's claim of a right to refuse to take a polygraph test that:

By accepting public employment as a police officer he subordinated his right of privacy as a private citizen to the superior right of the public to an efficient and credible police department.

Richardson v. City of Pasadena, 500 S.W.2d 175, 177 (Tex. Civ. App. -- Houston [14th Dist.] 1973), rev'd on other grounds, 513 S.W.2d 1 (Tex. 1974).

The exception contended to be applicable to this address information is based upon a similar exception in the Federal Freedom of Information Act, 5 U.S.C. § 552(b)(6). See Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 681 (Tex. 1976). The exception was designed to protect "intimate details" of a "highly personal" nature. Ditlow v. Shultz, 517 F.2d 166, 169-170 (D.C. Cir. 1975). The federal cases have said that this exception is applicable to matters commonly thought of as private, such as that concerning marital status, legitimacy of children, identity of fathers of children, medical condition, welfare payments, alcoholic consumption, family fights, etc. See e.g., Vaughn v. Rosen, 523 F.2d 1136 (D.C. Cir. 1975); Wine Hobby USA, Inc. v. IRS, 502 F.2d 133 (3rd Cir. 1974); Rural Housing Alliance v. Dept. of Agriculture, 498 F.2d 73 (D.C. Cir. 1974); Ackerley v. Ley, 420 F.2d 1336 (D.C. Cir. 1969); Ditlow v. Shultz, 379 F. Supp. 326 (D.D.C. 1974), decision on appeal deferred, 517 F.2d 166 (D.C. Cir. 1975); Marathon Le Tourneau Co., Marine Division v. National Labor Relations Board, 414 F.Supp. 1074, 1084 (S.D. Miss. 1976); Committee on Masonic Homes, Etc. v. National Labor Relations Board, 414 F.Supp. 426 (E.D. Pa. 1976). See Industrial Foundation of the South v. Texas Industrial Accident Board, supra at 681-83.

This exception permits a balancing of the individual's right of privacy against the public's interest in disclosure. See Industrial Foundation of the South v. Texas Industrial

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Accident Board, supra at 681-82. The high standard of "clearly unwarranted" requires that the balance be tilted in favor of disclosure. Getman v. National Labor Relations Board, supra at 674. However, before any balancing can occur, the first inquiry is whether disclosure of the information requested constitutes an invasion of privacy and, if so, how serious an invasion. Getman v. National Labor Relations Board, supra at 674.

A number of cases have found no invasion of the right of privacy in the disclosure of individuals' names and addresses. See National Labor Relations Board v. British Auto Parts, Inc., 266 F.Supp. 368, 373 (C.D. Cal. 1967), aff'd, 405 F.2d 1182 (9th Cir. 1968) (no constitutional right of privacy invaded by disclosure of names and addresses of employees to union); Lamont v. Commissioner of Motor Vehicles, 269 F.Supp. 880 (S.D. N.Y. 1967), aff'd, 386 F.2d 449 (2nd Cir. 1967), cert. denied, 391 U.S. 915 (1968) (claim of privacy involved in disclosure of motor vehicle registration lists, including names and addresses, "plainly unsubstantial"); Shibley v. Time, Inc., 341 N.E.2d 337 (Ohio App. 1975) (sale of subscription lists by publishers, amounting to sale of "personality profiles," constitutionally permissible). See also National Labor Relations Board v. Beech-Nut Life Savers, Inc., 274 F.Supp. 432 (S.D. N.Y. 1967) (list of employees' names and addresses available to union). Cf. Socialist Workers 1974 California Campaign Committee v. Brown, 125 Cal. Rptr. 915 (Cal. App. 1976) (statute requiring disclosure of names and addresses of contributors to political party, alleged to subject persons to harassment, not enjoined).

The cases under the Federal Freedom of Information Act dealing with the release of addresses have generally held that such information is not exempted from required disclosure. Robles v. Environmental Protection Agency, 484 F.2d 843 (4th Cir. 1973) (names and addresses of persons exposed to radiation emissions required to be disclosed); Getman v. National Labor Relations Board, 450 F.2d 670 (D.C. Cir. 1971) (names and addresses of persons eligible to vote in representative elections required to be disclosed). The only case under the FOIA in which access to home address information has been directly denied involved a request for names and home addresses of private persons who were heads of households licensed to make wine. The court emphasized that disclosure would reveal family status and wine-making activities within the home and denied the request, which was made for commercial purposes. Wine Hobby USA, Inc. v. IRS, 502 F.2d 133 (3rd Cir. 1974). The revelation of these intimate facts of home status and activity appeared to be important factors in the decision.

Cases in other states have held name and address information to be public information. The names and addresses of land owners over whose property proposed transmission lines would pass were required to be disclosed under New York's Freedom of Information Law in Smigel v. Power Authority, 387 N.Y.S.2d 962 (N.Y. App. Div. 1976). The case most directly in point is Warden v. Bennett, 340 So.2d 977 (Fla. 2d DCA 1976). This case involved a request by a labor organizer for the names and addresses of all employees of a college under the Florida Records Act. The Florida Act does not contain an exception for personnel records of public employees, but the courts have construed one to protect the privacy of public employees. Wisher v. News-Press Publishing Co., 310 So.2d 345 (Fla. 2d DCA 1975). The court held:

While an employee may occasionally want his address kept confidential, it is seldom that the address of a governmental employee would not be ascertainable from other sources. Therefore, an employee's expectation that his address cannot be ascertained is minimal. Moreover, there are legitimate reasons why the public might wish to know the address of a public employee. On balance, we believe that the addresses of public employees do not fall within the confidentiality of personnel files afforded by the Wisher case.

Warden v. Bennett, supra at 979.

Another case very much in point is McNutt v. New Mexico State Tribune Co., 538 P.2d 804 (N.M. App. 1975), cert. den., 540 P.2d 248 (N.M. 1975). Police officers and their wives sued a newspaper for invasion of privacy in connection with the publication of an article concerning a gun battle between officers and two members of a group known as the Black Berets. The names and home addresses of the officers were given in the article. Subsequent to publication several of the officers and members of their families received anonymous phone calls threatening violence. The court held:

The address of most persons appear in many public records: voting registration rolls, property assessment rolls, motor vehicle registration rolls, etc., all of which are open to public inspection. They also usually appear in such places as the

telephone directory and city directory which are available to public inspection. We therefore hold that an individual's home address is a public fact and that its mere publication, without more, cannot be viewed as an invasion of privacy.

Id. at 808.

Our review of the law concerning privacy as it relates to disclosure of a person's home address demonstrates that the overwhelming weight of authority holds that there is normally no legally recognizable privacy interest in one's home address. The Constitution does not recognize such an interest. Tort law does not recognize such an interest. One's home address cannot be considered a highly intimate or embarrassing fact about private affairs such that publication would be highly objectionable to a person of ordinary sensibilities. It is obviously true that disclosure could increase the risk of possible intrusion upon the solitude or seclusion of the person in his home.

We believe, however, from our review of the authorities discussed, that the "special circumstances" described in Open Records Decision No. 123 (1976) necessary to bring home addresses within the section 3(a)(2) exception from disclosure must be more than a desire for privacy or a generalized fear of harassment or retribution. See Department of the Air Force v. Rose, 425 U.S. 352, 380 (1976).

We have, however, considered the possibility that the dangers connected with police work are of a nature which would make such employment a special circumstance per se. While we have sympathy for this position, we could find no statutory or judicial support for it. If such a distinction is to be made, it will require an amendment to the statute.

We have reviewed the objections submitted by the employees involved, and have found only five assertions of such exceptional circumstances as would be necessary to take a particular case outside the general rule that address information is public. While many of the employees have taken some action to restrict public access to their telephone numbers and addresses, we find only five who have both taken effective action in this direction and have also demonstrated truly exceptional circumstances such as, for instance, an imminent threat of physical danger as opposed to a generalized and speculative fear of harassment or retribution.

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Based upon the documents submitted to us, it is our decision that, except for the address of three El Paso police officers and two City Public Service Board employees, the addresses of the public employees in question are not excepted from required public disclosure under section 3(a)(2) of the Open Records Act. One police officer, has indicated that the police department has information regarding a "contract" on his life resulting from a specific investigation in which he participated. Two other officers have changed their residences in specific response to acts of vandalism. One City Public Service Board employee moved several times to avoid harassment by a specific individual, and another City Public Service Board employee had experienced harassment in the past by a specific individual and had substantial reason to believe it would resume if her address were made public. All have taken precautions to insure that their home address was not available to the public. We believe these persons have demonstrated with sufficient specificity the kind of "special circumstances that would make disclosure a clearly unwarranted invasion of personal privacy." Open Records Decision No. 123 (1976). We are revealing their identities to Mr. Ross and Mr. Parker.

We cannot preclude the possibility that such special circumstances may exist as to other employees, either at this time or in the future. Our ruling is, of necessity, based upon the records submitted for our consideration. The determination of this type of controversy must be made on a case-by-case basis, and the circumstances of individual employees may, of course, change. As we noted in Open Records Decision No. 123 (1976), the initial determination should be made by the governing body to which a request for disclosure is directed. We believe that the application of standards set out in this decision will enable officials to exercise responsible discretion in isolating truly exceptional cases as to which disclosure of home address information might constitute a clearly unwarranted invasion of an employee's personal privacy. By submitting for our consideration only those claims of privacy which might legitimately come within this exception to disclosure, the decision making process may be greatly expedited, and the purposes of the Open Records Act more fully accomplished.

The request made to the City Public Service Board also requests the social security number of each employee. The Board contends that this information may be excepted as information deemed confidential by federal law and thus excepted under

section 3(a)(1), or may be excepted under section 3(a)(2) as information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

We have previously held that information including social security numbers is public. Attorney General Opinion H-242 (1974). The information requested in the case of Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 672 (Tex. 1976) included social security numbers. The court held that none of the information requested was excepted as information deemed confidential by constitutional law, and nothing in that case even suggests that disclosure of a social security number might involve an invasion of privacy.

It is suggested that section 7 of Public Law 93-579, the Privacy Act of 1974, 88 Stat. 1896, 1909, 5 U.S.C.A. § 552a, note, implicitly recognizes a privacy interest in an individual's social security number. We do not believe that this provision applies to restrict disclosure of a social security number. More recent amendments, enacted as part of the Tax Reform Act of 1976, Pub. L. No. 94-455, § 1211, 90 Stat. 1711 (1976), expressly provide that it is the policy of the United States that states and local governments may use social security account numbers to establish identification of individuals in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law. 42 U.S.C.A. § 405(c)(2)(C).

We are unable to find any law of the United States which would be violated by the disclosure of social security numbers by a governmental body under our Open Records Act. Case law on point indicates that no right of privacy is violated by requiring social security numbers to be divulged by an individual. Chambers v. Klein, 419 F.Supp. 569, 582 (D. N.J. 1976); Cantor v. Supreme Court of Pennsylvania, 353 F.Supp. 1307, 1321-22 (E.D. Pa. 1973); Conant v. Hill, 326 F.Supp. 25, 26 (E.D. Va. 1971); Ostric v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, 280 N.E.2d 692, 695 (Mass. 1972).

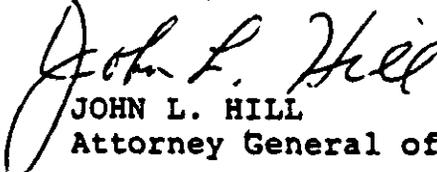
It is our decision that the social security numbers requested are not excepted from required public disclosure under sections 3(a)(1) or 3(a)(2) of the Open Records Act.

Thus, with the five exceptions indicated herein, the information requested is public.

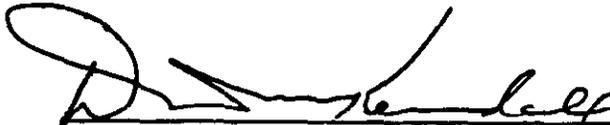
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Very truly yours,


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APPROVED:


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