



**THE ATTORNEY GENERAL
OF TEXAS**

October 26, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Mr. Wallace Shaw
City Attorney
City of Clute
P. O. Box 997
Clute, Texas 77531

Open Records Decision No. 532

Re: Whether sections 3(a)(1) and 3(a)(17) of the Texas Open Records Act, article 6252-17a, V.T.C.S., protect the names, home addresses, and home telephone numbers of applicants for positions as peace officers (RQ-1685)

Dear Mr. Shaw:

The City of Clute received a request under the Texas Open Records Act, article 6252-17a, V.T.C.S., for "the name, address and telephone number of all candidates who took a test administered by the police department in November to fill a vacancy." Clearly, the names of all candidates are public. See Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546 (Tex. App. - Austin 1983, writ ref'd n.r.e.). At issue here are only the home addresses and telephone numbers of candidates.

As a preliminary matter, the city asks whether "any exception to public release found in Section 3(a)(1) through Section 3(a)(21) of the Open Records Act" protects the requested information from required public disclosure. It is well established that under the act, governmental bodies have the burden of showing which exceptions apply to specific information and why. V.T.C.S. art. 6252-17a, § 7(a); Attorney General Opinion H-436 (1974); see Attorney General Opinion JM-672 (1987). Simply asking whether any of the exceptions apply will not suffice. Consequently, your request regarding section 3(a)(1) through section 3(a)(21) is overbroad. The city, however, also inquires specifically about sections 3(a)(1) and 3(a)(17).

Section 3(a)(1) protects

information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

Although this exception encompasses a broad range of information, its primary purpose is to protect privacy interests.

Whether an individual's home address and telephone number may be withheld under the privacy rights recognized in section 3(a)(1) depends on a showing of "special circumstances" militating against disclosure, circumstances beyond a general desire not to be disturbed at home. Open Records Decision No. 488 (1988) (citing Open Records Decision No. 169 (1977)). In Calvert v. Employees Retirement System of Texas, 648 S.W.2d 418, 420 (Tex. App. - Austin 1983, writ ref'd n.r.e.), the court held that release of the names and addresses of retired judges did not constitute an "unwarranted invasion of personal privacy" within the meaning of section 3(a)(2) of the act. The same general privacy test is applicable under sections 3(a)(1) and 3(a)(2). Hubert v. Harte-Hanks Texas Newspapers, *supra*, at 550. In Open Records Decision No. 455 (1987), this office held that the home addresses and telephone numbers of applicants and retirees from public employment ordinarily do not qualify as the kind of "intimate" information protected by privacy. Similarly, the basis for Open Records Decision No. 169 was that

[o]ne'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.

Open Records Decision No. 169 (1977), at 6.

Peace officers, however, because of fear of retaliation by criminals, may have greater reason to object to the disclosure of their home addresses and telephone numbers. They may more easily be able to show "special circumstances" to warrant withholding their home addresses and telephone numbers. Special circumstances include the efforts an individual has made to protect his or her home address and telephone number. For example, whether the home address and telephone number are unlisted is relevant.

Section 3(a)(17) protects:

the home addresses and home telephone numbers of each official and employee and each former official and employee of a governmental body except as otherwise provided by Section 3A of this Act, and of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code.

The purpose for section 3(a)(17) is to protect government employees from being harassed while at home. In Open Records Decision No. 455 (1987), the attorney general concluded that if a government employee elects, while employed, to protect his home address and telephone number from disclosure, the government body may not disclose the information during the employment relationship or after the employment relationship ends. The 71st Texas Legislature amended sections 3A and 3(a)(17) to protect former officers and employees. Acts 1989, 71st Leg., ch. 327, § 1, at 1291-92. Sections 3A and 3(a)(17) do not protect applicants for public employment. Open Records Decision No. 455, supra.

Section 3(a)(17) also protects the home addresses and telephone numbers of peace officers as defined by article 2.12 of the Texas Code of Criminal Procedure or by section 51.212 of the Texas Education Code. It is not necessary that a peace officer take action under section 3A to obtain the protection of section 3(a)(17). Open Records Decision No. 506 (1988).

The city asks about six specific situations involving applicants for the position of peace officer with the city. These situations may be summarized to include 1) applicants who were licensed peace officers at the time they applied with the city, whether or not they later were hired by the city or another governmental body, and 2) applicants who were not licensed peace officers at the time they applied, whether or not they later were hired by the city or another governmental body. Section 3(a)(17), by its express terms, protects the home addresses and telephone numbers "of peace officers as defined by Article 2.12, Code of Criminal Procedure, 1965, as amended, or by Section 51.212, Texas Education Code." This language is not contingent upon whether the individual at issue is employed by a governmental body; it is contingent only upon whether the individual is a "peace officer" as described in section 3(a)(17) at the time the request is received. See generally Open Records Decision No. 530 (1989).

Section 3(a)(17) refers to peace officers as defined by article 2.12 of the Code of Criminal Procedure. When the test was given in November 1988, article 2.12 provided:

The following are peace officers:

- (1) sheriffs and their deputies;
- (2) constables and deputy constables;
- (3) marshals or police officers of an incorporated city, town, or village;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Alcoholic Beverage Commission;

(7) each member of an arson investigating unit of a city, county or the state;

(8) any private person specially appointed to execute criminal process;

(9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;

(10) officers commissioned by the State Purchasing and General Services Commission;

(11) law enforcement officers commissioned by the Parks and Wildlife Commission;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers commissioned as peace officers by the State Treasurer;

(15) officers commissioned by a water control and improvement district under Section 51.132, Water Code;

(16) officers commissioned by a board of trustees under Chapter 341, Acts of the 57th Legislature, Regular Session, 1961 (Article 1187f, Vernon's Texas Civil Statutes);

(17) investigators commissioned by the Texas State Board of Medical Examiners;

(18) officers commissioned by the board of managers of the Dallas County Hospital District under Section 16, Chapter 266, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4494n, Vernon's Texas Civil Statutes);

(19) county park rangers commissioned under Article 6869d-1, Revised Statutes;

(20) stewards and judges employed by the Texas Racing Commission; and

Text of subd. (21) as added by Acts 1987,
70th Leg., ch. 262, § 20

(21) officers commissioned by the Texas State Board of Pharmacy.

Text of subd. (21) as added by Acts 1987,
70th Leg., ch. 350, § 1

(21) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 13, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), or by a regional transportation authority under Section 10, Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

The City of Clute may withhold the home phone numbers and addresses of individuals who fit within this definition at the time the request at issue was received.

Section 3(a)(17) also refers to section 51.212 of the Texas Education Code. Section 51.212 provides:

(a) The governing boards of private institutions of higher education, including private junior colleges, are authorized to employ and commission campus security personnel for the purpose of enforcing the law of this state on the campuses of private institutions of higher education. Any officer commissioned under the provisions of this section is vested with all the powers, privileges, and immunities of peace officers while on the property under the control and jurisdiction of the respective private institution of higher education or otherwise in

the performance of his assigned duties. Any officer assigned to duty and commissioned shall take and file the oath required of peace officers, and shall execute and file a good and sufficient bond in the sum of \$1,000, payable to the governor, with two or more good and sufficient sureties, conditioned that he will fairly, impartially, and faithfully perform the duties as may be required of him by law. The bond may be sued on from time to time in the name of the person injured until the whole amount is recovered.

(b) The governing boards of private institutions of higher education are authorized to hire and pay on a regular basis law-enforcement officers commissioned by an incorporated city. The officers shall be under the supervision of the hiring institution, but shall be subject to dismissal and disciplinary action by the city. An incorporated city is authorized to contract with a private institution of higher education for the use and employment of its commissioned officers in any manner agreed to, provided that there is no expense incurred by the city.

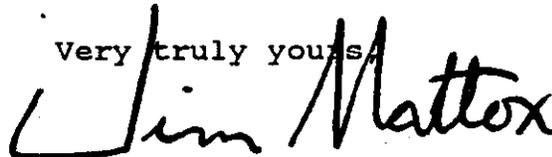
See also Code Crim. Proc. art. 2.2123 (adjunct police officers). The City of Clute may also withhold the home addresses and telephone numbers of individuals falling within the scope of section 51.212 at the time the city received the request at issue.

If an individual who was a candidate for the position of peace officer with the City of Clute Police Department met the definition of "peace officer" set forth in either article 2.12 of the Texas Code of Criminal Procedure or section 51.212 of the Texas Education Code at the time the open records request at issue was received, the home address and telephone number of the individual may be withheld under section 3(a)(17) of the Open Records Act. If the city is unable to determine whether the status of the individual has changed after receiving an application, the city may rely on information it had at the time of the individual's application. If the individual did not fall within such definitions, his or her home address and telephone number may be withheld only upon a showing of "special circumstances" as described in Open Records Decision No. 169.

S U M M A R Y

If an individual who was a candidate for the position of peace officer with the City of Clute Police Department met the definition of "peace officer" set forth in either article 2.12 of the Texas Code of Criminal Procedure or section 51.212 of the Texas Education Code at the time the open records request at issue was received, the home address and telephone number of the individual may be withheld under section 3(a)(17) of the Open Records Act. If the individual did not fall within such definitions, his or her home address and telephone number may be withheld only upon a showing of "special circumstances" as described in Open Records Decision No. 169 (1977). If the city is unable to determine whether the status of the individual has changed after receiving an application, the city may rely on information it had at the time of the individual's application.

Very truly yours,



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