



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTON  
ATTORNEY GENERAL

August 29, 1990

Mr. Hugh W. Davis, Jr.  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton  
Fort Worth, Texas 76102

OR90-413

Dear Mr. Davis:

You have received several requests under the Texas Open Records Act, V.T.C.S. art. 6252-17a, for information in police officers' personnel files. The dates of your letters, and the identification numbers that we have assigned them, are as follows:

Letter of October 6, 1989, forwarding request from CLEAT; ID# 7805

Letter of October 25, 1989, supplementing October 6 letter; ID# 7977

Letter of March 17, 1990, forwarding request from journalist for records of officer Sherman C. Neal; ID# 9164

Letter of March 23, 1990, forwarding request from journalist for records of Captain B. Ray Armand; ID# 9222

Letter of April 26, 1990, forwarding request from journalist for records for former police officer; ID# 9494

The officers are all Civil Service police officers and their personal files are maintained by the director of civil service. Each of your letters submitting these matters to us asked about the application of section 143.089 of the Local Government Code to the release of the requested information from civil service personnel files. When we received your requests, we were preparing a formal Open Records Decision on this question, and we deferred responding to them until that decision had been issued. Open Records Decision No. 562 (1990), issued July 6, 1990,

resolves your question. Section 143.089 of the Local Government Code provides that the directors of the police officers' civil service shall maintain a personnel file on each police officer. Section 143.089(f) reads as follows:

The director or the director's designee may not release any information contained in a . . . police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

Local Gov't Code § 143.089(f) (emphasis added).

Open Records Decision No. 562 concluded that the underlined language refers to the Open Records Act. Thus, if the Open Records Act requires release of information in a police officer's personnel file maintained by a civil service department, the officer's written consent is not necessary. Section 143.089(f) of the Local Government Code does not create a statutory privilege incorporated into section 3(a)(1) of the Open Records Act.

You also cite section 3(a)(2). This provision does not incorporate other statutes. Nor does it give an employee greater privacy rights than does section 3(a)(1). Hubert v. Harte-Hanks Texas Newspapers, Inc., 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

You do not claim any exceptions to disclosure of the requested information. Accordingly, the requested information is available to the public, with one possible exception: information in the files, if any, protected from public disclosure by a common law or constitutional right of privacy.

Information is protected from disclosure by a common law right of privacy only if it contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person. Constitutional privacy protects information within certain "zones or privacy" related to marriage, procreation, contraception, family relationships, and child rearing. See Open Records Decision No. 484 (1987).

None of the sample records you have provided are protected by a constitutional or common law right of privacy. However, if any other records responsive to the request appear to meet the test for common law or

constitutional privacy, refer them to this office in accordance with section 7 of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-413.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/le

Ref.: ID# 7805, 7871, 7977, 9164, 9222, 9494

Enclosure: Open Records Decision Nos. 484, 562

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