



Office of the Attorney General
State of Texas

October 27, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Ricardo E. Calderon
City Attorney
City of Eagle Pass
P. O. Box 4019
Eagle Pass, Texas 78853-4019

OR92-617

Dear Mr. Calderon:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 17460.

The City of Eagle Pass (the "city") has received a request for information relating to the settlement agreement concluded between the city and its former police chief. Specifically, the requestor seeks "to inspect and/or copy the settlement agreement entered into between the City of Eagle Pass and ex-City police chief Ray Mendiola," information detailing "the amount of money which was paid to Mendiola in settlement of his claims against the City of Eagle Pass . . . [including] the check issued to Mendiola in settlement of his claims", "the letter sent to the City by Mendiola, via his attorney or personally, stating his claims against the City of Eagle Pass," and "the City's response to the claims letter." You have withheld the requested information pursuant to section 7(c) of the Open Records Act and claim that Mr. Mendiola's privacy or property interests would be implicated by its release. You also claim that the requested information is made confidential by the terms of the requested settlement agreement.

Under section 7(c) of the Open Records Act, the person whose interests may be implicated may submit in writing to the attorney general the person's reasons for withholding the requested information. V.T.C.S. art. 6252-17a, § 7(c). Mr. Mendiola has indicated in writing that release of the requested information would implicate his privacy interests as incorporated into section 3(a)(2) of the Open Records Act. In addition, he indicates that release of some of the information would violate the attorney-client privilege as incorporated into the Open Records Act by section 3(a)(7).

Section 3(a)(2) excepts from required public disclosure "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The court in *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), found that section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the act by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Under *Industrial Foundation*, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Actions associated with a person's public employment generally do not constitute his private affairs. See Open Records Decision No. 470 (1987). On numerous occasions, this office has held that the reasons for an employee's resignation or termination are not ordinarily excepted from required public disclosure by the doctrine of common-law privacy. See, e.g., Open Records Decision Nos. 444 (1986) (reason's for employee's termination not excepted under doctrine of common-law privacy) (section 3(a)(2)); 329 (1982) (section 3(a)(2)); 269 (1981) (documents relating to an employee's resignation may not be withheld under doctrine of common-law privacy) (section 3(a)(2)).

Having examined the documents submitted to us for review, we conclude that the requested information is not "intimate or embarrassing." Moreover, the requested information is of legitimate interest to the public. Thus, the requested information does not meet the test for common law privacy under *Industrial Foundation* and may not be withheld from required public disclosure under section 3(a)(2) of the Open Records Act.

Next, we address your claim that the requested information is made confidential by the terms of the requested settlement agreement. Governmental bodies may not enter into agreements or contracts to keep information confidential except where specifically authorized to do so by statute. Open Records Decision No. 444 (1986); see also Open Records Decision Nos. 514 (1988); 484; 479 (1987); 437 (1986); 425 (1985); 414 (1984).¹ You do not indicate, nor is it otherwise apparent, that the confidentiality provision in the settlement agreement is

¹Agreements entered into prior to June 14, 1973, containing express promises of confidentiality may be withheld in order to avoid the constitutional prohibition against impairment of the obligation of contracts. Open Records Decision No. 284 (1981).

specifically authorized by statute. Thus we do not conclude that the settlement agreement may by its terms make the requested information confidential.

Finally, we address Mr. Mendiola's assertion that some of the requested information is protected by the attorney-client privilege. Attorney-client communications may be withheld only to the extent that such communications document client confidences or reveal the attorney's legal opinion and advice. Open Records Decision No. 574 (1990). Because the documents for which Mr. Mendiola claims the attorney-client privilege have been made available to the opposing party, *i.e.*, the city, we conclude that the attorney-client privilege is not applicable and that the documents may not be withheld from required public disclosure under section 3(a)(7) of the Open Records Act.

Accordingly, the requested information in its entirety must be made available to the requestor. 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 OR92-617.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee

MRC/GCK/lmm

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