



Office of the Attorney General
State of Texas

December 7, 1992

DAN MORALES
ATTORNEY GENERAL

Ms. Roberta Lloyd Fremaux
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR92-686

Dear Ms. Fremaux:

A Harris County constable has received a request pursuant to the Texas Open Records Act, article 6252-17a, V.T.C.S., for all personnel and training records maintained on a specific individual. Your request was assigned ID# 17710.

You state that this individual was formerly a reserve deputy with the constable's office but does not at present hold a position with that office. You have provided some of the individual's personnel file information to the requestor and have sent us the remaining documents, consisting primarily of his application for employment, for an open records determination. You believe that portions of the documents are excepted from required public disclosure by subsections 3(a)(1), 3(a)(2), or 3(a)(17) of the Open Records Act, and you have marked them accordingly.

You claim that sections 3(a)(1) and 3(a)(2) of the Open Records Act except most of the information you have marked. Section 3(a)(1) excepts from disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Thus, section 3(a)(1) incorporates statutes that render specified information confidential. Section 3(a)(1) also applies to information confidential under the common-law and constitutional rights of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To be protected from disclosure by the common-law right of privacy, information must (1) contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) be of no legitimate concern to the public. *Industrial Found. of the South*. The constitutional right of privacy protects information within the "zones of privacy" recognized by the United States Supreme Court. *Id.* These

"zones of privacy" include matters related to marriage, procreation, contraception, family relationships, child rearing and education.

Section 3(a)(2) applies to "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . ." The test for privacy under section 3(a)(2) is the same as that delineated for section 3(a)(1) by the opinion in *Industrial Found. of the South. Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Since section 3(a)(2) does not give public employees a greater right of privacy than does section 3(a)(1), we will limit our discussion to your claims that information is excepted from disclosure by section 3(a)(1).

There are two documents in the file that are confidential under section 415.057 of the Government Code. Under this provision, the Texas Commission on Law Enforcement Officer Standards and Education may not license an officer unless the person has been:

(1) examined by a licensed psychologist or psychiatrist and declared in writing by the psychologist or psychiatrist to be in satisfactory psychological and emotional health to be the type of officer for which a license is sought; and

(2) examined by a licensed physician and declared in writing by the physician to show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.

The agency hiring the person who wishes to be licensed as an officer arranges for these examinations and sends a copy of each declaration to the commission. Section 415.057(b) of the Government Code provides that "[a] declaration is not public information." The declarations as to the psychological health of the reserve deputy constable and as to drug use are excepted from disclosure by this statute.

The individual's application for employment includes personal financial information and information about his credit history. The personal financial information provided by an applicant to a governmental body on his application for public employment is excepted from disclosure by a common law right of privacy. Open Records Decision No. 481 (1987); *see also* Open Records Decision No. 545

(1990) (personal financial decisions made by public employees are confidential under a common law right of privacy).

You assert that the individual's membership in civic and professional organizations is excepted from disclosure by section 3(a)(1). This office has said that information about an applicant's qualifications for public employment, including his membership in professional organizations, is not excepted from disclosure by section 3(a)(1) of the Open Records Act. Open Records Decision No. 264 (1981); *see also* Open Records Decision No. 273 (1981). You do not show that disclosure of information about the individual's membership in organizations would violate his right to privacy or his exercise of the first amendment right of association. *See generally* Open Records Decision Nos. 557 (1990) at 5; 185 (1978) (discussion of right to association in context of Open Records Act). Nor does the information show on its face that it is excepted from disclosure to the public by any such rights. Accordingly, the information about the individual's membership in organizations is available to the public.

The application includes a statement by the applicant relating to alcoholic beverages. You claim that this statement is excepted from disclosure by section 3(a)(1). The statement is not within one of the zones of privacy protected by the constitution; nor does it, in our opinion, meet the first branch of common-law privacy. Moreover, since it concerns a public employee with law enforcement duties, there is a public interest in information about his use of alcoholic beverages. The response to the question on use of alcoholic beverages is not excepted from disclosure by section 3(a)(1). *But see* Open Records Decision No. 262 (1980) (ambulance report indicating that an individual has suffered "acute alcohol intoxication" is protected from disclosure by a common-law right of privacy).

You also claim section 3(a)(1) for a personal declaration on the application relating to being fired/forced to resign from a job. An applicant's reasons for leaving a former employment are ordinarily not excepted from public disclosure. Open Records Decision No. 455 (1987); *see also* Open Records Decisions Nos. 329 (1982), 269 (1981) (reasons for public employee's resignation not excepted from disclosure absent facts that would give rise to a constitutional or common law right of privacy). We find nothing in this item of information that would except it from disclosure by section 3(a)(1).

The file also includes a report from a medical clinic giving the results of a blood test for a number of drugs. We have examined this information and agree

with your claim that this information is excepted from disclosure by section 3(a)(1) of the act. An examination of the physician's declaration regarding drug usage indicates that the blood test was ordered by the physician who prepared the declaration pursuant to section 415.057 of the Government Code. The blood test report is excepted from disclosure by the physician-patient privilege in section 5.08 of article 4495b, V.T.C.S. We need not consider whether it is also excepted from disclosure by a constitutional or common-law right of privacy. *See generally Whalen v. Roe*, 429 U.S. 589 (1977); Open Records Decisions Nos. 600 (1992); 455 (1987) at 5; *see also* Open Records Decision No. 594 (1991).

Section 3(a)(17) provides an exception for:

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

A reserve deputy constable is not expressly identified as a peace officer by article 2.12 of the Code of Criminal Procedure, although a deputy constable is. A reserve deputy constable is appointed by the constable pursuant to section 86.012 of the Local Government Code, and "may serve as peace officer during the actual discharge" of his official duties. During that time he is vested "with the same rights, privileges, and duties of any other peace officer in this state." Local Gov't Code § 86.012. *See also* Gov't Code § 415.001(5),(7) (definition of "peace officer" is found in article 2.12 of the Code of Criminal Procedure; "reserve law enforcement officer" is defined by other provisions). However, we need not decide the exact status of the reserve deputy constable for purposes of section 3(a)(17), because he is entitled to the benefit of that provision either as a peace officer or as a public employee. Accordingly, the home address of the reserve deputy constable is excepted from disclosure wherever it appears in the personnel file.

The individual's application for employment asks for all addresses where the applicant has lived during the past ten years, beginning with the present address. He provided a present address and two addresses where he previously resided. A person's "home" is his "place of residence." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY at 577. The two prior addresses are not home addresses, because the

applicant no longer resides there. The two prior addresses are not excepted from disclosure by section 3(a)(17) of the Open Records Act.

You do not cite section 3(a)(19) with respect to the reserve deputy constable's photograph that appears on a copy of his driver's license. Since this provision protects the right of a third party, this office may apply it even though you have not raised this claim. Section 3(a)(19) excepts the following from disclosure:

photographs that depict a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, the release of which would endanger the life or physical safety of the officer unless:

(A) the officer is under indictment or charged with an offense by information; or

(B) the officer is a party in a fire or police civil service hearing or a case in arbitration; or

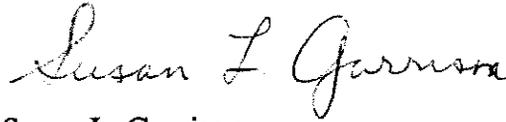
(C) the photograph is introduced as evidence in a judicial proceeding.

This provision does not require a threshold determination that the peace officer would be endangered by release of the photograph. Open Records Decision No. 502 (1988).

We have marked the records to show where we have disagreed with your claims that information is excepted from disclosure by sections 3(a)(1) or 3(a)(17). Because case law and prior published open records decisions resolve this matter, we are communicating our decision by this informal letter ruling rather than by

published open records decision. If you have questions about this ruling, please refer to OR92-686.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

SLG/lmm

Ref.: ID# 17710

Enclosure: Open Records Decision No. 455

cc: Mr. Ernest O. Hopmann III
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(w/o enclosure)