



Office of the Attorney General
State of Texas

April 30, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
County Courthouse
P.O. Box 1748
Austin, Texas 78767

OR93-218

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 18704.

The Travis County Community Supervision and Corrections Department (the "department") has received two requests for information relating to a county employee now under consideration for a demotion. Specifically, in his first request, the requestor seeks "a copy of all documents and statements related to the present or recently concluded investigation concerning Unit Manager Barbara Dominey." In his second request, the requestor seeks:

- (1) Copies of all Performance Reviews or other documents created for Probation Officers and Senior Probation Officers over the past seven (7) months as part of their P.E.A.K., Annual, or other Departmental evaluation.
- (2) Payroll records indicating present salary and dates of employment for all Probation Officers, Senior Probation Officers and Unit managers.
- (3) Any and all guidelines, memorandum, rules, regulations, or other written material issued by an entity which describes, explains, guides, or is relied upon by Unit managers in evaluating and/or scoring Probation Officers as part of their performance reviews.
- (4) Any documents involving performance of, or complaints against, and the resultant Departmental response thereto, naming North-1 Unit Manager Barbara Dominey. Such materials should

include, but not be limited to, the Departmental action or response (if any) to that Formal Complaint filed by Senior Probation Officer Kerr dated April 20, 1992 involving Dominey.

You claim that section 3(a)(1) of the Open Records Act in conjunction with common-law privacy doctrine excepts some of the requested information from required public disclosure. We also have received a brief under section 7(c) of the Open Records Act in which the attorney representing the county employee asserts that section 3(a)(2) in conjunction with the common-law privacy doctrine excepts the requested information from required public disclosure.¹

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." Section 3(a)(2) protects personnel file information only if its release would cause an invasion of privacy under the test the Texas Supreme Court articulated for section 3(a)(1) of the act in *Industrial Foundation of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* test, 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. Generally, actions associated with a person's public employment do not constitute his or her private affairs. *See* Open Records Decision No. 470 (1987). On numerous occasions, this office has held that the doctrine of common-law privacy ordinarily does not except from required public disclosure the reasons for an employee's resignation or termination. *See, e.g.*, Open Records Decision Nos. 444 (1986) (reasons for employee's termination not excepted under doctrine of common-law privacy) (section 3(a)(2)); 329 (1982); 269 (1981) (documents relating to employee's resignation may not be withheld under the doctrine of common-law privacy).

We have examined the documents submitted to us for review. They relate to the demotion and possible termination of a county employee. While some of the requested information may be embarrassing to the county employee at issue here, it relates to her job performance and is of legitimate interest to the public. Accordingly, we conclude that the department may not withhold the requested information from required public disclosure on common-law privacy grounds. The department must, therefore, release the requested information in its entirety.²

¹The attorney also asserts that the requested information is excepted from required public disclosure under section 3(a)(11) of the Open Records Act. Section 7(c), however, permits submission of briefs from third parties only in cases where third-party privacy or property interests are implicated. The section 3(a)(11) exception is designed to protect governmental interests and thus may not be asserted under section 7(c) of the Open Records Act. The third-party attorney's assertion that the county should require the requestor to more specifically identify the requested documents is likewise inappropriate under section 7(c).

²The third-party attorney also appears to claim that the requested information should be withheld on "false light" privacy grounds, stating: "the documents are rife with unsubstantiated accusation of a

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 OR93-218.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

KKO/GCK/le

Ref.: ID# 18704
ID# 18844
ID# 18945
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highly personal nature." "False light" privacy interests, however, are not a proper consideration under the Open Records Act. See Open Records Decision No. 579 (1990).