



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 28, 1993

Mr. Gary F. Chatham  
City Attorney  
City of Plano  
P.O. Box 860358  
Plano, Texas 75086-0358

OR93-227

Dear Mr. Chatham:

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# 19714.

The City of Plano (the "city") received an open records request for

[t]he personnel file of past employee Sherwood Prescott, including salary history, performance appraisals and any memos, documents, or settlement agreements related to the termination of his employment.

You have submitted to this office for review two separate "personnel" files: one from the city's Human Resources Department and another which was maintained by the former employee's department head. You contend that certain information contained in the Human Resources file, *e.g.*, insurance records, tax withholding statements, and information relating to deferred compensation or retirement benefits, comes under the protection of common-law privacy and thus comes under the protection of section 3(a)(2) of the Open Records Act.

For information to be protected by section 3(a)(2), it must 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* the information must be of no legitimate concern to the public. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). This office generally agrees that the records you have indicated as being confidential must be withheld.<sup>1</sup> *See generally* Open Records Decision No. 600 (1992) at 9 - 12 (personal financial information) (copy enclosed). We

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<sup>1</sup>Certain of these records are specifically made confidential by statute. *See, e.g.*, 26 U.S.C. § 6103(a) (income tax information); Gov't Code § 855.115 (employee retirement information).

note, however, that the former employee's social security number is not protected by common-law privacy, see Open Records Decision Nos. 226 (1979) and 169 (1977) at 7 - 8; consequently, you must release this information. We also note that driver's license numbers are not confidential under Texas law; consequently, this information must also be released. We have indicated the documents that you must withhold from the Human Resources file; the remaining information must be released.

With regard to the other "personnel" file, you do not contend that any of those records are protected from required public disclosure, but have requested an open records decision pursuant to section 7(c) of the act. You have, accordingly, informed the former employee of the open records request for his personnel records and he has submitted to this office his objections to the public disclosure of several of these documents.

Mr. Prescott first contends that many of the documents you have submitted to this office for review do not come within the ambit of the open records request and thus should not be released. We disagree. Although the requestor specifically asks for "salary history, performance appraisals and any memos, documents, or settlement agreements related to the termination of his employment," the request also encompasses Mr. Prescott's personnel file as a whole. For purposes of the Open Records Act, any information relating to an employee's employment relationship is considered a part of his personnel file. See Open Records Decision No. 327 (1982). Consequently, all of the records submitted to this office are subject to the request and thus may be withheld only if they come under the protection of one of the act's exceptions.

Mr. Prescott also contends that his privacy would be violated by the release of the second personnel file. After reviewing the records contained in that file, this office concludes that none of that information constitutes "highly intimate or embarrassing facts about a person's *private* affairs." Further, this information pertains solely to the former employee's actions as a public servant and as such cannot be deemed to be outside the realm of public interest. Section 3(a)(2) was not intended to protect the type of information at issue here.

Mr. Prescott also cites section 3(a)(11) of the act, which protects "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The purpose of section 3(a)(11) is to protect certain *governmental* interests. Under section 7(c) of the Open Records Act, third parties have standing to assert only their personal privacy or proprietary interests in the non-disclosure of information. Consequently, Mr. Prescott lacks standing to assert the protection of this section. Because none of the information in this file implicates Mr. Prescott's privacy interests, and the city has raised none of the act's exceptions with regard to these records, this second personnel file must be released in its entirety.

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 OR93-227.

Yours very truly,

  
Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/RWP/le

Ref: ID# 19714

Enclosures: Open Records Decision No. 600  
submitted documents

cc: Mr. Curtis Howell  
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(w/o enclosures)

Mr. Sherwood F. Prescott, Jr.  
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(w/o enclosures)