



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 17, 1993

Ms. Jackie Denman  
City Secretary  
City of Lancaster, Texas  
P.O. Box 940  
Lancaster, Texas 75146-0940

OR93-243

Dear Ms. Denman:

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# 18744.

The City of Lancaster (the city) received an open records request for a city employee's personnel file<sup>1</sup>, including the employee's original employment application. You state that you have previously released to the requestor the employee's various professional licenses, certificates, and employment application, with the employee's home address, telephone number, and social security number deleted. You have submitted to this office for review the employee's personnel file in its entirety. Although you contended in your original letter to this office that portions of the file are protected by section 3(a)(2) of the Open Records Act, in subsequent correspondence you appear to contend that other information is also protected by the right of privacy. You also contend that

[e]valuation forms in the file should be exempt from disclosure because they contain opinion, advice and recommendation used in [the] decisional process.

You appear to contend that the evaluation forms are exempt from public disclosure under section 3(a)(11) of the act.

In Open Records Decision No. 515 (1988) at 6, this office held that a governmental body must demonstrate "compelling reasons" for withholding information pursuant to

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<sup>1</sup>Subsequent to your submitting to this office the documents that you believe to be protected from required public disclosure, the requestor of the records informed this office that she is not interested in obtaining records pertaining to the employee's transactions with lending institutions, the employee's insurance and retirement benefits, or his choice of beneficiary for life insurance and other benefits. Consequently we need not discuss here whether these records are excepted from required public disclosure.

an exception that it failed to raise within the initial ten days following the receipt of an open records request. The city received the current open records request on January 25, 1993, but did not raise section 3(a)(11) until March 3, 1993. Because you raised section 3(a)(11) after the expiration of the ten day time period and have failed to demonstrate any compelling reason for withholding this information, you have waived the protection of section 3(a)(11).

You contend that certain other documents contained in the personnel file come under the protection of section 3(a)(2) of the Open Records Act. Section 3(a)(2) protects, *inter alia*, "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test for section 3(a)(2) protection is the same as that for information protected by common-law privacy under section 3(a)(1): to be protected from required disclosure the information 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. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546 (Tex. App.--Austin, 1983 writ ref'd n.r.e.).

Most of the information at issue does not come under the protection of section 3(a)(2), including performance evaluations, notations of promotions and salary increases, Open Records Decision No. 444 (1986), and the employee's college transcript. Open Records Decision Nos. 470, 467 (1987). Accordingly, the city must release these records. However, in Open Records Decision No. 545 (1990), this office held that some information revealing individuals' personal financial decisions regarding deductions from their salaries comes under the protection of common-law privacy. Contained within the personnel file are records reflecting the employee's decision to have certain voluntary deductions from his salary. The portions of the forms entitled "Employee Master Maintenance" and "Employee Master Record" that reflect those voluntary deductions must be withheld.<sup>2</sup>

The file also contains an "Employee Emergency Notification Information" form wherein the employee has designated certain individuals the city should contact in case of an emergency. This form reflects a personal decision of the employee that is of no legitimate interest to the public and thus is also protected by section 3(a)(2).

The personnel file also contains a "Pre-Employment Examination" form reflecting a medical examination performed on the employee. Section 3(a)(1) of the act protects "information deemed confidential by law, either Constitutional, statutory, or by judicial

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<sup>2</sup>The remaining information on these forms must, however, be released, except for those portions not subject to the open records request.

decision."<sup>3</sup> The Texas Medical Practice Act, V.T.C.S. article 4495b provides in pertinent part:

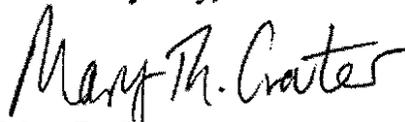
Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

V.T.C.S. art. 4495b, § 5.08(b). This record was "created . . . by a physician" during the course of the medical examination and thus must be withheld pursuant to section 3(a)(1).

Finally, we note that the personnel file contains a form in which the employee has elected to have his home address and telephone number kept confidential. *See* V.T.C.S. art. 6252-17a, § 3A. Consequently, the city must withhold this information pursuant to section 3(a)(17) of the Open Records Act. The employee's social security number, however, is not confidential under Texas law and therefore must be released. *See* Open Records Decision Nos. 226 (1979) and 169 (1977) at 7-8.<sup>4</sup> The city must release all other records in the personnel file not discussed above.

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 contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Opinion Committee

MRC/RWP/le

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<sup>3</sup>It is not clear from your correspondence whether you have raised section 3(a)(1). Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision Nos. 455 (1987); 325 (1982), we will raise section 3(a)(1) because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor. *See* V.T.C.S. art. 6252-17a, § 10(a), (f).

<sup>4</sup>The requestor alleges that you have deleted other information contained in the application prior to your previous release of this record to her. Although this office cannot resolve factual disputes in the opinion process, we note that because you have raised no exceptions to public disclosure with regard to this record, the city has waived the right to withhold *any* portion of this document except as discussed above. For similar reasons, the employee's resume must also be released in its entirety.

Ref: ID# 18744  
ID# 19225

cc: Ms. Sheryl Atteberry  
2523 Hulette  
Lancaster, Texas 75134  
(w/o enclosures)