



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 30, 1994

Mr. Steve Baker
Acting City Attorney
City of Galveston
P.O. Box 779
Galveston, Texas 77553-0779

OR94-140

Dear Mr. Baker:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552 (formerly V.T.C.S. art. 6252-17a).¹ Your request was assigned ID# 24448.

The City of Galveston (the "city") has received a request for access to the personnel files of two city employees. You object to release of some of the requested information, which you have submitted to us for review, and claim that it is excepted from required public disclosure by sections 552.101, 552.102, and 552.111 of the act.²

Section 552.101 (formerly section 3(a)(1), V.T.C.S. article 6252-17a) excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that some of the requested information is made confidential by section 5.08(b) of the Medical Practice Act, article 4495b, V.T.C.S. Section 5.08(b) prohibits the release to the public of "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician." Some of the information submitted to us for

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²In Open Records Decision No. 622 (1994) (copy enclosed), this office addressed your assertions that section 552.101 in conjunction with federal law excepts social security numbers from required public disclosure and that section 552.117(1)(A) excepts the former home addresses and telephone numbers of public employees. In this informal letter ruling, we address the other asserted exceptions.

review falls within the ambit of section 5.08(b). This information has been marked and may be released only pursuant to the Medical Practice Act.

You also claim that some of the information is excepted from disclosure under section 552.101 in conjunction with article 6687b, section 21(j)(3), V.T.C.S. Article 6687b, section 21(j)(3) provides as follows:

The [Department of Public Safety] is not authorized to provide class-type listings from the basic drivers' license record file to any person or business except as provided by Section 44B(d) of this Act.

See also Open Records Decision No. 498 (1988). While this statute prohibits the Department of Public Safety from releasing certain information, it does not prohibit the city from doing so. Accordingly, the city may not withhold drivers' license information from required public disclosure under section 552.101 of the act.

You also claim that the employee's W-4 forms must be withheld from public disclosure pursuant to federal law. We agree. Such information is made confidential by title 26 of the United States Code, section 6103(a), and thus must be withheld under section 552.101 of the act. Open Records Decision No. 600 (1992) at 8-9.

Next we address your assertion that section 552.102 excepts some of the requested information from required public disclosure. You claim that section 552.102 excepts from disclosure certain financial information and the number of the employees' dependents. Section 552.102 (formerly section 3(a)(2), V.T.C.S. article 6252-17a) protects personnel file information only if its release would cause an invasion of privacy under the test articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See also* *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision No. 441 (1986). 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.³ In Open Records Decision No. 600 at 10, this office held that information about an employee's choice to participate in an optional insurance program that is funded by the employee and not the state is a "personal financial decision" that is protected by common-law privacy. *See also* Open Records Decision No. 545 (1990) at 4-5. In addition, the names of beneficiaries are intimate or embarrassing and of no legitimate concern to the public. Open Records Decision No. 600

³Information previously held by this office not to be protected by common-law privacy interests includes applicants' and employees' educational training, names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving, names, occupations, addresses and phone numbers of character references, job performances or abilities, names of friends or relatives employed by the governmental body, birth dates, height, weight, marital status, and social security numbers. *See* Open Records Decision No. 455 (1987).

at 11. The public, however, has a legitimate interest in information about an employee's enrollment in a plan that is funded by the governmental body and in the fact that the employee has enrolled others than himself in the plan. *Id.* at 10.

The information submitted to us for review includes information about the city employees' enrollment in hospital insurance, life insurance, and pension plans. You indicate that all three plans are funded by the city. On the basis of this information, we conclude that information indicating the employees' choice to participate in the hospital insurance and life insurance plans and the employees' participation in the mandatory pension program is of legitimate public concern and is not protected by common-law privacy. Accordingly, this information may not be withheld from required public disclosure under section 552.102 of the act. Furthermore, information which reveals the number of an employee's dependents is not intimate or embarrassing. Information indicating the employees' beneficiaries' identities, however, which *is* intimate or embarrassing, has been marked and must be withheld from required public disclosure.

Finally, we address your assertion that section 552.111 excepts some of the requested information from required public disclosure. Section 552.111 excepts information if it constitutes an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 552.111 exception and held that section 552.111 excepts only those internal communications consisting of advice, recommendation, opinion, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6. As the information submitted to us for review relates to internal personnel matters, we conclude that section 552.111 does not except it from required public disclosure. Except as discussed above and in Open Records Decision No. 622, the requested information 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 contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

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Enclosures: Open Records Decision No. 615
Open Records Decision No. 622
Marked documents

cc: Mr. Jim Mabe
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(w/o enclosures)