



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 29, 1994

Mr. Robert L. Harris  
Assistant City Attorney  
for the City of Cedar Hill  
Law Offices of Sifford & Anderson, L.L.P.  
6300 NationsBank Plaza  
901 Main Street  
Dallas, Texas 75202

OR94-206

Dear Mr. Harris:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 23056.

The City of Cedar Hill (the "city"), which you represent, received two open records requests for the personnel records of a former city employee. You contend that certain records contained in the employee's personnel file come under the protection of former section 3(a)(2) of the Open Records Act (now found at section 552.102 of the Government Code), the informer's privilege, and the attorney-client privilege.

Section 552.102(a) of the Government Code protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

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<sup>1</sup>The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46.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.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: 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 Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.-Austin 1983, writ ref'd n.r.e.). The information at issue 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. *See* Open Records Decision No. 444 (1986) (*public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee*). Section 552.102(a) was not intended to protect the type of information at issue here.

You next contend that the informer's privilege excepts from public disclosure all witness statements pertaining to the former employee's termination. We note, however, that the employee has had prior access to each of these statements. Because part of the purpose of the privilege is to prevent retaliation against informants, the privilege does not apply when the informant's identity is known to the party who is the subject of the complaint. *See* Open Records Decision No. 208 (1978). Accordingly, the informer's privilege is inapplicable here.

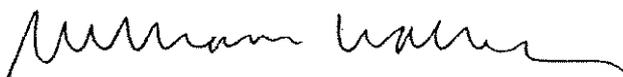
Finally, you seek to withhold pursuant to the attorney-client privilege certain documents prepared during the former employee's appeal of his termination and subsequent claim that he filed against the city. Although you raise the attorney-client privilege in the context of former section 3(a)(1), this privilege is more properly deemed to be an aspect of section 552.107(1) (former section 3(a)(7)), which protects "information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas." *See* Open Records Decision No. 574 (1990); *see also* Open Records Decision No. 575 (1990) (former section 3(a)(1) does not encompass discovery privileges). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.*

You do not explain, nor is it apparent to this office, why "privileged" attorney-client communications and legal advice appear in the personnel file of an employee who has filed a claim against the city. Most of the documents you seek to withhold consist of communications between the city's and the employee's attorneys during the pendency of the employee's appeal and claim, which clearly are not protected by the attorney-client privilege. Nor do we believe that notes taken at a meeting that opposing attorneys attended would consist of "privileged communications" for purposes of section 552.107(1).

After reviewing the records at issue, this office identified only one piece of correspondence dated September 26, 1990, from the city's attorney to the city's personnel director that consists of privileged legal advice and opinion and may therefore be withheld pursuant to section 552.107(1). However, the city must release to the requestors all of the remaining records in their 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 our office.

Yours very truly,



William Walker  
Assistant Attorney General  
Open Government Section

WW/RWP/rho

Ref.: ID# 23056

Enclosures: Submitted documents

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