



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 15, 1994

Mr. William J. McGowan, II  
City Attorney  
City of Brownfield  
P.O. Box 71  
Brownfield, Texas 79316-0071

OR94-354

Dear Mr. McGowan:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 24623.

The City of Brownfield (the "city") has received a request for information about two former employees of the city's police department under the act. The requestor asks for the employees' dates of employment and the reasons for their departure, as well as information about whether they are eligible for rehire, whether there were any allegations of misconduct against them, whether they were investigated for criminal charges while employed by the city, whether they were subject to disciplinary action by the police department, whether they reported a criminal history on their applications for employment, and which law enforcement departments were listed on their applications as former employers. In response to this request, you have forwarded to this office what appear to be the former employees' entire personnel files.<sup>2</sup> You claim that all of the information is excepted from required public disclosure under sections 552.101 and 552.102 of the act.

Section 552.101 of the act excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial

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<sup>1</sup>We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a.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.

<sup>2</sup>The act does not require governmental bodies to prepare answers to questions. *See* Open Records Decision Nos. 563, 555 (1990). It is appropriate for a governmental body to treat questions as requests for documents under the act, as the city has done here.

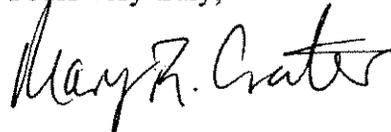
decision." Section 552.101 incorporates the doctrine of common-law privacy. To be protected under this doctrine, information (1) must contain highly intimate and embarrassing facts about a person's private affairs such that its release would be objectionable to a reasonable person and (2) be of no legitimate concern to the public. *Industrial Found. v. Industrial Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The test applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation. Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Thus, section 552.102 does not provide for any greater protection of information in personnel files than does section 552.101.

In general, records reflecting the kind of information sought by the requestor are not confidential under these provisions. Because there is a legitimate public interest in the activities of public employees in the workplace, information about public employees is commonly held not to be excepted from public disclosure under the common-law privacy test. For example, information about public employees' job performance or the reasons for their dismissal, demotion, promotion, or resignation is not excepted from public disclosure. Open Records Decision Nos. 470 (1987); 444 (1986); 405 (1983). Similarly, information on applications for public employment is generally not excepted. See Open Records Decision No. 455 (1987).

You have submitted a large volume of information to this office, most of which is not responsive to the request. It is not the role of this office to sort through the former employees' personnel files to determine which information is responsive. Furthermore, it is not within the purview of this office to review material that is not subject to a request under the act to determine whether or not it is excepted from required public disclosure. The city must determine which information is responsive. It may then resubmit any responsive documents, marking any information that it believes is confidential under sections 552.101 and 552.102, to this office for a ruling if it does so within ten days of the date of this letter. Any responsive information that is not confidential must be released immediately.

Because case law and prior published open records decisions resolve your request, we address it 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  
Open Government Section

MRC/KKO/sbm

Ref: ID# 24623

Enclosures: Submitted documents

cc: Mr. Billy Shropshire  
P.O. Box 244  
Seagraves, Texas 79359  
(w/o enclosures)