



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 30, 1995

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 75015-2288

OR95-034

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30724.

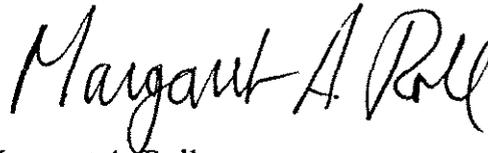
The City of Irving (the "city") has received a request under the Open Records Act for "[a]ny written memorandum or report between [various city officials] discussing a proposed termination of [the fire chief] or a request for his resignation. Any written memorandum or report discussing performance of his official duties as fire chief and reasons for possibly requesting his resignation circulated among any city officials. A proposed letter of resignation drafted by city officials and presented to [the fire chief] on Nov. 28." You have sent for our review copies of a release and waiver agreement and a letter of resignation. You claim that these documents are protected from required public disclosure by section 552.102.

We conclude that section 552.102 does not except either of these documents from required public disclosure. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This section applies only if the information in a personnel file meets the test for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 444 (1986), this office determined that the public has a genuine interest in the circumstances of a public employee's resignation or termination and reiterated the principle that a governmental body may not simply agree to keep information confidential. Open Records Decision No. 444, at 6. Therefore, you must release both the agreement and the letter of resignation in their entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/PIR/rho

Ref.: ID# 30724

Enclosures: Submitted documents

cc: Ms. Vanisha Desai
Irving News
1000 Avenue H. East
Arlington, Texas 76011
(w/o enclosures)