



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 11, 1995

Mr. Edward W. Dunbar
Dunbar & Barill, L.L.P.
1700 North Stanton
El Paso, Texas 79902

OR95-557

Dear Mr. Dunbar:

You have asked 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# 31509.

You represent the El Paso County Community College District (the "college"). The college received a request for information concerning the evaluation of candidates for two teaching positions and any information related to that selection process. Information responsive to the request has been submitted to this office for review. You contend that this information is excepted from disclosure pursuant to sections 552.102(b), 552.111, and in order to protect "the privacy of the individual job candidates." We will address your arguments against disclosure.

Section 552.101 excepts from disclosure information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 excepts information from disclosure that would be an invasion of privacy under the test set by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under that test, information is excepted from disclosure by common-law privacy if the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Id.*

Thus, even intimate and embarrassing information may not be withheld from disclosure when there is a legitimate public interest in the information. Generally, the public has a legitimate interest in the job qualifications and performance of public employees. *See* Open Records Decision No. 470 (1987) at 5. In the past, this office has concluded that common-law privacy does not protect an applicant's or employee's

educational training; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and telephone numbers of character references; and information about job performance. *See generally* Open Records Decision No. 455 (1987) at 8. The information at issue includes evaluations and recommendations of candidates for the positions and the candidates' resumes, employment applications, and references. None of the information at issue is excepted from disclosure by common-law privacy.

However, some of the information submitted to this office may be confidential by law. Some of the candidates appear to be current or former public employees. The applications, resumes, and other information submitted to this office provide home addresses and home telephone numbers. The college must withhold from public access the current and former home addresses and home telephone numbers of employees or former employees who, as of the time of the request for the information, elected to keep that information private. *See* Open Records Decision Nos. 622 (1994), 530 (1989) at 5, 482(1987) at 4, 455 (1987). However, home addresses and home telephone numbers of the other applicants and any private citizens may not be withheld from disclosure. Open Records Decision No. 455 (1987) at 7.

The information at issue includes transcripts. Section 552.102(b) protects from required public disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." *See also* Open Records Decision No. 526 (1989). This exception is inapplicable to applicants' transcripts, because they are not public school employees.¹ We note, however, that some of these transcripts contain current or former home addresses of public employees and, as discussed previously, the college must withhold home addresses of employees who have opted to keep this information private.

You also contend that the evaluations and recommendations regarding applicants for the two positions are excepted from disclosure under section 552.111. Section 552.111 excepts from disclosure interagency or intra-agency communications "consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body." Open Records Decision No. 615 (1993) at 5. As you point out, this office previously held that section 552.111 was applicable to the advice, opinion and recommendations used in decision-making processes within an governmental entity. Open Records Decision Nos. 574 (1990) at 1-2; 565 (1990) at 9. However, in *Texas Department of Public Safety v. Gilbreath*, 842

¹The transcripts have identification numbers that could be social security numbers. We note that in Open Records Decision No. 622 (1994), this office determined that social security numbers must be withheld under federal law if obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. It is not apparent to this office, nor do we have any way to determine, whether these identification numbers are social security numbers that must be kept confidential.

S.W.2d 408 (Tex. App.--Austin 1992, no writ), the court addressed the proper scope and interpretation of this section. In light of that decision, this office reexamined its past rulings. In Open Records Decision No. 615 (1994), we determined that in order to be excepted from disclosure, the advice, opinion, and recommendation must be related to policymaking functions of the governmental body rather than to decision-making concerning routine personnel and administrative matters. The information at issue concerns the selection of candidates for positions and appears to involve routine personnel or administrative matters rather than the college's policymaking functions. Thus, the information at issue is not excepted from disclosure under section 552.111.

You must withhold from disclosure the home addresses and home telephone numbers of employees who have opted to keep that information confidential. The other records at issue must be disclosed. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling may be relied upon as a previous determination under section 552.301 as to home addresses, home telephone numbers, social security numbers, and transcripts. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 31509

Enclosures: Submitted documents