



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 6, 1995

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR95-919

Dear Mr. Schneider:

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# 28132.

The City of Pasadena (the "city") received a request for information concerning an investigation regarding a city plumbing inspector. You contend that the requested information is excepted from required public disclosure under sections 552.103, 552.108, and 552.111 of the Government Code.

We note that the city received the initial request for information by letter dated July 25, 1994. This office received a request for an open records ruling from the city by letter dated August 5, 1994. The city did not raise any specific exceptions to the open records act. By letter dated August 19, 1994, the city raised sections 552.103, 552.108, and 552.111 of the Government Code.

Section 552.301 of the Open Records Act provides that a governmental body must ask for a decision from the attorney general not later than the tenth calendar day after the date a written request for information is received by the governmental body. Gov't Code § 552.301(a). Where requests are not made within ten days, the information is presumed to be public. *Id.* § 552.302; Open Records Decision No. 319 (1982). A governmental body may not raise additional exceptions after the ten-day deadline, including a request for reconsideration, absent a showing of compelling interest, Open Records Decision No. 515 (1988), that is, that the information is confidential under some other source of law or that third-party privacy interests are at stake, *see* Open Records Decision Nos. 586 (1991), 552 (1990), 515 (1988), 452 (1986), 319 (1982); *see also* *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ).

As the city did not raise exceptions to required public disclosure until after the ten day deadline and you have not shown a compelling interest, you may not withhold the requested information.¹

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 should 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/LBC/rho

Ref: ID# 28132

Enclosures: Submitted documents
Confidentiality List

cc: Mr. Brad Beers
Hardin, Beers, Hagstette & Davidson
1201 Louisiana, Suite 3300
Houston, Texas 77002-5609
(w/o submitted documents)

Ms. Irene E. Foxhall
Mayor, Day, Caldwell & Keeton, L.L.P.
700 Louisiana, Suite 1900
Houston, Texas 77002-2778
(w/o submitted documents)

¹We note that as the city did not meet the ten day deadline, this office did not review the submitted documents for confidential information. We have attached a list of the most common types of information that must be withheld by law.

Mr. Richard Battaglia
P.O. Box 131276
Houston, Texas 77219-1276
(w/o submitted documents)

PLEASE NOTE THAT THE RECORDS SUBMITTED TO THIS OFFICE FOR REVIEW MAY CONTAIN INFORMATION DEEMED CONFIDENTIAL BY LAWS NOT ADDRESSED IN THE ATTACHED LETTER RULING. YOU SHOULD THOROUGHLY EXAMINE THE RECORDS AT ISSUE TO DETERMINE WHETHER ANY OF THE PROVISIONS LISTED BELOW APPLY TO INFORMATION IN THESE RECORDS THAT MUST BE WITHHELD IN ACCORDANCE WITH STATE OR FEDERAL LAW.

WE CAUTION THAT THIS IS NOT AN EXCLUSIVE LIST OF CONFIDENTIALITY PROVISIONS AND TYPES OF INFORMATION PROTECTED FROM DISCLOSURE BY COMMON-LAW PRIVACY. THE LIST INCLUDES ONLY THOSE STATUTORY CONFIDENTIALITY PROVISIONS THAT FREQUENTLY AFFECT REQUESTS FOR RECORDS. IF YOU HAVE ANY QUESTIONS REGARDING THE APPLICABILITY OF THESE OR ANY OTHER CONFIDENTIALITY PROVISIONS, PLEASE CONSULT YOUR AGENCY ATTORNEY, WHO WILL BE MOST FAMILIAR WITH PROVISIONS THAT DIRECTLY AFFECT YOUR AGENCY.

**COMMON TYPES OF INFORMATION DEEMED
CONFIDENTIAL UNDER COMMON-LAW PRIVACY**
(NOTE: RIGHT OF PRIVACY LAPSES UPON DEATH)

- Information revealing details of sexual assault. Open Records Decision Nos. 440 (1986), 339 (1982).
- Prescribed drugs a person is taking. Open Records Decision No. 455 (1987).
- Information regarding drug overdoses, *acute* alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982).
- Results of psychological and IQ tests. Open Records Decision No. 600 (1992).
- Personal financial information, *e.g.*, mortgage payments, assets, bills, credit history. Open Records Decision Nos. 545 (1990), 373 (1983). *Note: Present and past salaries of public employees and applicants for public employment are not confidential.*
- Information regarding an employee's participation in a deferred compensation plan, including whether or not an employee is participating, and certain information regarding insurance, such as choice of carrier and optional coverages. Open Records Decision Nos. 600 (1992), 545 (1990).
- Allegations of sexual harassment -- If there is a clear summary of the allegations, the summary must be released but the identities of victims and witnesses must be redacted from the summary and their detailed statements must be withheld from disclosure. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). If no summary exists, detailed statements regarding the allegations must be released but identities of the witnesses and victims must be redacted from those statements.

INFORMATION COMMONLY PROTECTED BY
STATUTORY CONFIDENTIALITY

- Medical records -- "Records of the identity, diagnosis, evaluation, or treatment of a patient that are *created or maintained by a physician.*" V.T.C.S. art. 4495b, § 5.08(b).
- The federal Americans With Disabilities Act (the "ADA", 42 U.S.C. §§ 12101 - 12213, may apply to employee and applicant medical information obtained by a governmental body. The ADA provides that information regarding the medical condition or history of an applicant or employee must be treated as a *confidential medical record.* *Id.* § 12112(c)(3)(B), (4)(C).
- Mental health records -- "Records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained" by a mental health professional. Health & Safety Code § 611.002.
- EMS records -- "Records of the identity, evaluation, or treatment of a patient" created or maintained by EMS personnel. Health & Safety Code § 773.091.
- Polygraph examination results -- Any "information acquired from a polygraph exam." V.T.C.S. art. 4413(29cc), § 19A.
- Home addresses and telephone numbers of public employees and former employees who have elected, *prior to the current open records request*, to restrict access to this information in compliance with Gov't Code § 552.024(b).
- Home addresses and telephone numbers of peace officers. Gov't Code § 552.024.
- Criminal history information -- All TCIC and NCIC information; other compilations of an individual's criminal history *except for offense for which individual is currently under the supervision of criminal justice system.*
- Records of juvenile offenders -- Fam. Code § 51.14.
- Records relating to reports of child abuse -- Fam. Code § 34.08.
- Social security numbers -- confidential only if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law that was enacted on or after October 1, 1990. 42 U.S.C. section 405(c)(2)(C)(viii)(I); *see* Open Records Decision No. 622 (1994).
- Student records -- confidential only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). Therefore, governmental bodies must withhold from education records only that information tending to identify a particular student. "Directory information," as defined at 20 U.S.C. § 1232g(a)(5)(A), must be released in its entirety.