



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 11, 1995

Ms. Mary Nichols
Custodian of Records
City of Wylie
P.O. Box 428
Wylie, Texas 75098

OR95-922

Dear Ms. Nichols:

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# 23541.

The City of Wylie (the "city") has received an open records request for a copy of a former city employee's personnel file. You state that the documents contained within the file include "unemployment forms, drug test results, dismissal information, performance evaluations, retirement information, payroll reduction information, medical enrollment forms, and documents that reveal the employee's social security number and information on his spouse." You further state that the city does not object to the release of those documents within the scope of the act, however, concern has arisen regarding the protection of privacy interests of current and prior employees. In this regard, we shall address sections 551.101 and 551.102 of the code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 thus incorporates the doctrines of other statutory provisions that make specified documents confidential. Information must be withheld under common-law privacy if it meets the criteria the Texas Supreme court articulated for section 552.101 in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing and it is of no legitimate concern to the public. *Id.* at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. article 6252-17a, section 3(a)(1)).

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (Court ruled that test to be applied in decision under statutory predecessor to § 552.102 was the same as that delineated in *Industrial Foundation* for statutory predecessor to § 552.101). Accordingly, we will consider the arguments for withholding under § 552.101 and § 552.102 together.

We have reviewed the information that you have submitted to this office and conclude that such information does not implicate the privacy interests of any current or prior employee. See Open Records Decision No. 444 (1986). Moreover, neither the city or the former employee has leveled an objection to the release of this particular file. Thus, 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.

Very truly yours,



Toya Cirica Cook
Assistant Attorney General
Open Records Division

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Ref.: ID# 23541

Enclosures: Submitted documents