



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 10, 1995

Mr. Riley J. Simpson
City Attorney
Copperas Cove
P.O. Drawer 1449
Copperas Cove, Texas 76522

OR95-1205

Dear Mr. Simpson:

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# 28217.

The Chief of Police for the Copperas Cove Police Department received a request from Lt. Milford Howard for "all supervisor evaluations written by patrol officers on [the requestor] and Sgt. Tim Lawrence." However, within the documents submitted for our review, there is also a memorandum from Sgt. Tim Lawrence to the chief of police requesting "the specific complaints that [the chief has] received and from whom" as well as "a copy of the audio recording that [the chief] made" during a meeting with Sgt. Tim Lawrence on August 2, 1994. Any written request for information must be considered valid under the Open Records Act even where the request does not specifically name the Open Records Act. Open Records Decision No. 483 (1987) at 2; *see also* Open Records Decision No. 497 (1988) at 3 (so long as written request reasonably can be identified as request for public records it is request under Open Records Act). Accordingly, we will consider in this ruling both requests for information.

You claim that the requested information is excepted from required public disclosure under sections 552.101 and 552.102 of the Government Code. You also cite Open Records Decision No. 172 (1977) as authority to withhold the requested information under section 552.101. We have reviewed this opinion and conclude that your intention is to raise the "informer's privilege" as incorporated under section 552.101 of the Government Code. We will address your arguments under section 552.102 first.

Section 552.102 excepts, in pertinent part:

(a) . . . information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, *except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.* [Emphasis added.]

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, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (ruling that test to be applied in decision under statutory predecessor to section 552.102 was same as that delineated in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for statutory predecessor to section 552.101). Information is protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it 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 Foundation, 540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to section 552.101).

However, privacy interests arise only in the context of a particular individual vis `a vis others, and are not implicated where only the person himself is concerned. Where a person asks a governmental body only for information about himself, no privacy interest arises. Open Records Decision No. 481 (1987). Sgt. Lawrence requested the complaints about himself. You may not withhold this information from Sgt. Lawrence under section 552.102 of the Government Code. Nor may you withhold the requested information about Lt. Howard from Lt. Howard under section 552.102

Furthermore, even highly subjective evaluations of public employees may not ordinarily be withheld under section 552.102. Open Records Decision Nos. 473 (1987), 316 (1982); *see also* Open Records Decision No. 444 (1986) (even if information in employee's personnel file is highly intimate or embarrassing, it ordinarily would be of such legitimate concern to the public as to be disclosable). Accordingly, you may not withhold the supervisor evaluations of Sgt. Lawrence from Lt. Howard under section 552.102 of the Government Code.¹

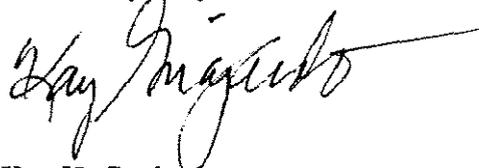
¹We note that you indicate that the records are not in the personnel file of the employee. We understand you to mean that the records are not physically contained in the employee personnel file.

Next we will consider whether the evaluations are excepted from required public disclosure under the "informer's privilege" as incorporated by section 552.101 of the Government Code. Texas courts long have recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 (1990) at 4. For information to come under the protection of the informer's privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 (1988) at 2-5, 391 (1983). Because none of the sections on the blank evaluation form concern alleged violations of criminal or civil laws and you do not indicate that the violation of such laws are at issue, you may not withhold the requested evaluations under the informer's privilege aspect of section 552.101.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You do not indicate any laws, nor are we aware of any laws, that would make the requested information confidential. You may not withhold the requested information under section 552.101 as information made confidential by law.

Section 552.101 also incorporates the doctrine of common-law privacy. However, as we have already determined under section 552.102 that none of the information may be withheld under privacy rights, we need not consider that issue here. As you raise no other exceptions to required public disclosure, you must release the evaluations in their entirety. We note that you raised no exceptions in reference to the requested audio tape. Unless you submit compelling reasons, such as, confidentiality under another source of law or third party privacy interests, within ten days of receipt of this ruling, you must release the requested audio tape in its entirety as well. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/LBC/rho

(Footnote continued)

Anything bearing upon the qualifications for employment or the employment relationship is a part of a person's personnel file regardless of the physical location of the information. Open Records Decision Nos. 332 (1982), 55 (1974).

Ref.: ID# 28217

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