



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 18, 1995

Mr. Mark T. Sokolow
City Attorney
City of League City
300 West Walker
League City, Texas 77573-3898

OR95-1431

Dear Mr. Sokolow:

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# 31631.

The City of League City (the "city") received a request for a memorandum written by the mayor to the city council. You contend that the requested information is excepted from required public disclosure under sections 552.109 and 552.111 of the Government Code.

Section 552.109 of the Government Code excepts from required public disclosure:

[P]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy

This section protects the same privacy interests as section 552.101, and decisions under section 552.109 and its statutory predecessor rely on the same tests applicable under section 552.101. *See, e.g.,* Open Records Decision Nos. 506 (1988) at 3; 241 (1980); 212 (1978). Section 552.109 protects the privacy interests only of elected office holders. Open Records Decision No. 473 (1987). It does not protect the privacy interests of their correspondents. Open Records Decision No. 332 (1982).

Section 552.101 excepts information from required public disclosure if its release would cause an invasion of privacy under the test articulated 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). Information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Information may also be withheld from required public disclosure under section 552.101 if its release would cause an invasion of constitutional privacy.

The constitutional right to privacy consists of two related interests: (1) the individual interest in independence in making certain kinds of important decisions, and (2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional "zones of privacy" described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These "zones" include matters related to marriage, procreation, contraception, family relationships, and child rearing and education and are clearly inapplicable here.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual's privacy interests against the public's need to know information of public concern. Although such a test might appear more protective of privacy interests than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). We have reviewed the memorandum submitted to this office. The memorandum does not contain information that can be considered intimate and embarrassing nor does it concern the "most intimate aspects of human affairs." Accordingly, you may not withhold the requested information under section 552.109 of the Government Code.

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

We agree that portions of the memorandum contain advice, recommendations, opinions, and other material reflecting the policymaking processes of the city. We have marked the information that may be withheld under section 552.111. The remaining information must be released.

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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LBC/rho

Ref: ID# 31631

Enclosures: Marked documents

cc: Ms. Barbara Spencer
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(w/o enclosures)

