



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 21, 1995

Mr. Ron Stephens
City Manager
City of Kilgore
P.O. Box 1307
Kilgore, Texas 75662

OR95-1562

Dear Mr. Stephens:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27336.

The Kilgore Police Department (the "department") received a request for information relating to a police officer who resigned from the department in 1991. The request seeks the following two categories of documents:

1. Correspondence, memoranda and other written documents constituting applications for employment, documents reflecting previous experience and employment, certificates or other evidence of training and/or other education, chronological listing of duty assignments, decorations, awards and citations and documents evidencing weapons qualifications of Deryl Wayne Robertson, formerly employed by the department.
2. Correspondence, memoranda and other written documents constituting complaints by citizens and/or other law enforcement officers against Deryl Wayne Robertson during or immediately after his period of employment with the department.

You have submitted the requested information to us for review. You have also submitted information that does not appear to be responsive to the request. We have marked that information for your convenience. We do not address whether any of this information falls within the exceptions set out in sections 552.101 and 552.102.¹

¹We note that no document entitled "application for employment" was submitted to this office for review.

We have considered the exceptions you have referenced in your letter, specifically sections 552.101 and 552.102, and have reviewed the highlighted information at issue. Section 552.101 excepts from disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The employee's Employment Eligibility Verification, Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); see 8 C.F.R. § 274a.2(b)(4). Release of this document under the Open Records Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential under section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), cert. denied, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. See *id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. See Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). 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, 492 (5th Cir. 1985), cert. denied, 474 U.S. 1062 (1986)).

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme

Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. Therefore, we will first address whether section 552.101 applies to the highlighted information.

You have submitted for review a form in which Mr. Robertson consented to a physical examination and release of the results of that examination to the department and the actual physical examination report. Nothing in section 552.101 or section 552.102 excepts the consent form from disclosure. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). Access to the physical examination report is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA.

This office has previously held that information about public employees' professional awards and recognition are subject to disclosure. Open Records Decision Nos. 444 (1986) at 4, 168 (1977) at 2. Therefore, the letters of commendation concerning Mr. Robertson are subject to disclosure.

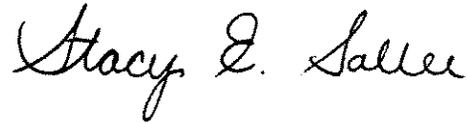
The next group of documents concerns complaints about Mr. Robertson. In a prior decision, this office determined that the charges made against a public employee that relate to the manner in which the employee performed his job are of legitimate interest to the public. Open Records Decision No. 405 (1983) at 2; *see* Open Records Decision Nos. 562 (1990) at 8-10, 484 (1987) at 3, 6 (holding that certain facts about complaints against law enforcement officers are available to the public, including officer's name, name of complainant, nature of complaint, disposition of complaint, and descriptions of off-duty incidents), 444 (1986) at 4-5, 400 (1983) at 3-4, 208 (1978). The public has a legitimate interest in charges against law enforcement officers. Open Records Decision No. 562 (1990) at 9. Therefore, with the exception of the information set out below, the complaints must be produced.

Some of the complaints include information about off-duty matters involving Mr. Robertson's family and other matters that fall within an individual's right to privacy. Therefore, they meet the first prong of the common-law privacy test. Moreover, we do not believe that there is a legitimate public interest in knowing about these matters. We have marked the information that must be withheld from the public under section 552.101.

One of the documents contains information that falls within the protection of sections 611.002 and 611.004 of the Texas Health & Safety Code. That information is also protected from disclosure under common-law privacy because it is highly intimate or embarrassing and the legitimate public interest in that information is minimal. We have marked the information that must be withheld under these statutes.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Ref.: ID# 27336

Enclosures: Marked documents

cc: Mr. J. Tom Graham
Publisher
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P.O. Box 210
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(w/o enclosures)