



Office of the Attorney General

State of Texas
December 13, 1996

DAN MORALES
ATTORNEY GENERAL

Ms. Janie L. Johnson
Assistant District Attorney
Gregg County
101 East Methvin Street, Suite 333
Longview, Texas 75601

OR96-2397

Dear Ms. Johnson:

You have asked whether certain information is subject to required public disclosure under the chapter 552 of the Government Code. Your request was assigned ID# 102545.

Gregg County (the "county") received several requests for information. One requestor asked for information concerning applicants for the position of purchasing agent. Another requestor asked for a report concerning recommendations about the purchasing department. You submitted a letter to this office that contains information about the applicants for the position.¹ Also submitted to this office was a copy of the requested report. You assert that both documents may be withheld from disclosure pursuant to sections 552.101, 552.102, 552.104 and 552.111 of the Government Code.

You assert that the identities of the applicants for the position are protected under section 552.101 on the basis of the applicants' privacy interests. You also assert that the portion of the report that contains a job evaluation should be withheld to protect the evaluated employee's privacy, as provided under section 552.102. The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in section 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). None of the information in the letter is intimate or embarrassing, and there is a public interest in the selection process. The job evaluation in the report relates to the job performance and work behavior of a public servant. There is a legitimate public interest in a public servant's conduct and job performance.

¹We note that the letter submitted to this office concerning the applicants apparently was created in response to the request for information. A governmental body is not generally required to create documents in response to a request for information. *Economic Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.- San Antonio 1987, writ dismissed w.o.j.). The letter is responsive to the request for information.

Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is narrow). Neither the letter nor the job evaluation in the report may be withheld from disclosure on the basis of privacy.

You assert that section 552.104 excepts from disclosure some of the information at issue. Section 552.104 excepts from disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in a commercial context by keeping some competitors or bidders from gaining unfair advantage over other competitors or bidders. Open Records Decision No. 541 (1990) at 4. To show that section 552.104 is applicable, a governmental body must demonstrate potential harm to its interests in a particular competitive situation. Open Records Decision No. 593 (1991). We note that the county has already selected a purchasing agent. Section 552.104 is inapplicable in this situation.

You assert that both the letter and report are excepted from disclosure under section 552.111, which protects from required public disclosure a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). We note that an agency's policymaking functions do not encompass routine internal administrative and personnel matters. *See id.* Disclosure of such matters does not inhibit free discussion among agency personnel as to policy issues. *See id.* Thus, the letter and the job evaluation in the report are not excepted from disclosure. However, the remaining portion of the report is protected from disclosure under section 552.111, as it contains recommendations and opinions encompassing a policymaking matter.

We are resolving this matter with this 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 may 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 102545

Enclosures: Marked documents

cc: Mr. Mike Bedwell