



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 8, 1997

Mr. John Steiner  
Division Chief  
City of Austin  
Law Department  
P.O. Box 1546  
Austin, Texas 78767-1546

OR97-1062

Dear Mr. Steiner:

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# 106360.

The City of Austin (the "city") received an open records request for the personnel file of the city's Civil Service Coordinator. You contend the requested information is excepted from required public disclosure pursuant to sections 552.101 and 552.103 of the Government Code.

Because section 552.103 is the more inclusive exception that you raise, we will consider it first. Section 552.103 of the Government Code, known as the litigation exception, excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. You contend that section 552.103(a) excepts this material from required disclosure because the

requestor has filed a law suit against the City of Austin, the Austin Civil Service Commission and the Austin Police Department, and others . . . . [The requestor seeks] the personnel file of the City employee who wrote the test questions for the Commission's January 9, 1997 detective exam, which is the subject of the lawsuit. The requested materials are directly related to the lawsuit. The petition alleges that the detective examination was so poorly written that it violates state statute and due process . . . and that the Civil Service Coordinator lacked the knowledge and experience necessary to design a lawful test. . . .

Although you contend that the entire personnel file is excepted from required public disclosure under section 552.103, we believe that you have met your burden in demonstrating the "relatedness" of this information to the litigation only insofar as the personnel file contains information pertaining to the Civil Service Coordinator's professional background and job qualifications. We have marked the information that the city may withhold pursuant to section 552.103.<sup>1</sup>

We next address the applicability of section 552.101 of the Government Code to the remaining information not otherwise protected by section 552.103. Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Although we agree that certain information contained in the requested personnel file reflects "personal financial decisions" that are confidential under common-law privacy, *see* Open Records Decision No. 600 (1992), most of the information you have marked does not implicate the coordinator's privacy interests, but rather is excepted from required public disclosure pursuant to section 552.117(a) of the Government Code, *i.e.*, the coordinator's home address and telephone number, social security number, and information that reveals whether the coordinator has family members. Because none of the remaining information contained in the personnel file comes under the protection of the exceptions you raise, the remaining information must be released to the requestor.

---

<sup>1</sup>We assume, however, that none of the information in the records at issue has previously been made available to the opposing parties in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent the opposing parties have seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103.

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,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/RWP/rho

Ref.: ID# 106360

Enclosures: Marked documents

cc: Ms. Ruth Bullock  
c/o Mr. Gary Bledsoe  
200 E. 6th Street, Suite 206  
Austin, Texas 78701  
(w/o enclosures)

