



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 18, 1997

Mr. William S. Nail
General Counsel
Employees Retirement System of Texas
P.O. Box 13207
Austin, Texas 78711-3207

OR97-1644

Dear Mr. Nail:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 108289.

The Employees Retirement System of Texas ("ERS") received a request for various information concerning the selection of a benefits educator. You assert that portions of the requested information are excepted from required public disclosure based on sections 552.024, 552.102 and 552.111 of the Government Code.

Section 552.024 of the Government Code provides a method for public employees and officials to elect to allow public access to certain personal information, including the person's home address, home telephone number, social security number and information about the person's family. Therefore, if at the time ERS received the request, the successful applicant had elected to deny public access to this information in accordance with section 552.024, ERS must not release such information to the public. Gov't Code § 552.117; *see* Open Records Decision No. 530 (1989).

You assert that the successful applicant's previous salary is excepted from disclosure based on section 552.102. Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to be applied to information claimed to be protected under section 552.102 is the same test formulated by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

Section 552.101, which excepts from disclosure information that is confidential by law, incorporates the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We do not believe a successful applicant's previous salary is highly intimate information. *See Open Records Decision No. 455* (1987) at 9. Moreover, we believe the public has a legitimate interest in an employee's past employment. *See id.* Consequently, ERS may not withhold the information from disclosure based on section 552.102 of the Government Code.

You argue that section 552.111 applies to "scores assigned applicants and notes taken by the interviewers." Section 552.111 of the Government Code excepts from required public disclosure:

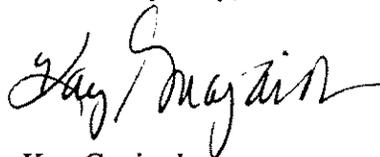
An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

This exception applies to 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). An agency's policymaking functions do not encompass routine internal administrative and personnel matters. *See id.*

We believe the applicant scores and interview notes are administrative, personnel matters that do not reflect ERS's policymaking process. Thus, section 552.111 is inapplicable in this instance.

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,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID#108289

Enclosures: Submitted documents

cc: Mr. Juan Sanchez
508 Tamworth
Austin, Texas 78745
(w/o enclosures)

