



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 29, 1997

Ms. Barbara G. Heptig
Assistant City Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR97-1724

Dear Ms. Heptig:

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# 108827.

The Arlington Police Department (the "department") received an open records request from a former police department trainee for her personnel file and an Internal Affairs Division file. You state that the department has released to the requestor her personnel file. You seek to withhold the Internal Affairs file pursuant to sections 552.101, 552.102, and 552.108 of the Government Code.

Section 552.102(a) of the Government Code is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. See Open Records Decision No. 336 (1982). See also Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

Employee privacy under section 552.102(a) is less broad than common law privacy under section 552.101 because of the greater public interest in disclosure of information regarding public employees. Open Records Decision Nos. 269 (1981), 169 (1977). This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision Nos. 315 (1982), 298 (1981), 284 (1981), 269 (1981), 224 (1979), 169 (1977). None of the information you have submitted comports with this standard, but rather pertains solely to the former employee's

qualifications as a public servant, and as such cannot be deemed to be outside the realm of public interest. See Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the type of information at issue here.

Nor do we believe that any of the information at issue implicates the privacy interests of third parties that would be protected under section 552.101 of the Government Code. The information at issue bears directly on the circumstances surrounding the termination of the employee and therefore is of legitimate interest to the public. Accordingly, the department may not withhold any of the *Internal Affairs* file pursuant to common-law privacy.

You also contend that the internal affairs records may be withheld from the public pursuant to section 552.108 of the Government Code, which excepts from public disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). Please note, however, that the “law-enforcement exception” is not applicable to internal affairs investigations where no criminal investigation takes place. *Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. App.--El Paso 1992, writ denied). You have not argued, nor is it apparent from the records you submitted to this office, that the records at issue pertain to a criminal investigation conducted by the department. Consequently, we conclude that you have not met your burden in demonstrating the applicability of section 552.108 to the records at issue. The department therefore must release the requested records in their entirety, with the following exception.

Section 19A of article 4413(29cc), V.T.C.S., which governs the release of polygraph examinations, provides in pertinent part:

(c) A licensed polygraph examiner, licensed trainee, or employee of a licensed polygraph examiner may disclose information acquired from a polygraph examination to:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person . . . or governmental agency that requested the examination;
- (3) members or their agents of governmental agencies such as federal, state, county, or municipal agencies that license, supervise, or control the activities of polygraph examiners;

(4) other polygraph examiners in private consultation, all of whom will adhere to this section; or

(5) others as may be required by due process of law.

(d) A person for whom a polygraph examination is conducted or an employee of the person may disclose information acquired from the examination to a person described by Subdivisions (1) through (5) of Subsection (c) of this section.

(e) The board or any other governmental agency that acquires information from a polygraph examination under Subdivision (3) of Subsection (c) of this section shall keep the information confidential.

Consequently, the department is barred from releasing the *results* of the polygraph examinations to anyone except as specifically provided by section 19A of article 4413(29cc), V.T.C.S. *See also* Open Records Decision No. 430 (1985). The mere fact that a polygraph examination has been conducted, however, is not confidential under the statute and 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/RWP/alg

Ref.: ID# 108827

Enclosures: Submitted documents

cc: Ms. Kendra Penny
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(w/o enclosures)

