Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1997

Ms. Tiffany Haertling
Hayes, Coffey & Berry
P.O. Box 50149
Denton, Texas 76206

OR97-1887

Dear Ms. Haertling:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID# 108008.

The Town of Hickory Creek (the "town"), which your office represents, received a request "for copies of statements given by members of the Hickory Creek town staff regarding comments allegedly made by Hickory Creek Police Chief Ronnie Pair." The requestor further specifies that "[t]he statements needed were given by Mike Millisalijevich, Linda Asbell, Cindy Levell and Sgt. John Musgrave." In response to the request, you submitted to this office for review the information which you assert is responsive. You seek to withhold the submitted information pursuant to sections 552.101 and 552.102 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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

[1]We note that in your letter, dated June 4, 1997, directed to this office you indicated that you had submitted "documents with markings to indicate the precise information that Hickory Creek considers to be protected by exceptions." However, we note that in reviewing your submissions, we did not observe any markings.

legitimate public concern. *Industrial Found. of the South 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.).

Most of the records at issue relate to the job performance and work behavior of public employees. There is a legitimate public interest in the work behavior of a public employee and how he or she performs job functions. 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). Therefore, we conclude that the submitted information may not be withheld pursuant to section 552.101 or 552.102.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

Sam Haddad
Assistant Attorney General
Open Records Division

SH/glg

Ref.: ID# 108008

Enclosures: Submitted documents

cc: Ms. Melissa Conger
Reporter
The Lake Cities Sun
P.O. Box 879
Lake Dallas, Texas 75605
(w/o enclosures)