



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1997

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR97-2112

Dear Ms. Calabrese:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109194.

The City of Houston (the "city") received a request for the personnel file of a city employee and all documents relating to the civil service commission hearing held on March 27, 1997, for that employee. You inform us that you have released most of the information to the requestor. However, you assert that the submitted information is protected by common-law privacy under section 552.101. We have considered the exception you claim and reviewed the information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric

treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683; *see also* Open Records Decision Nos. 470 (1987) (concluding that fact that a person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs a person is taking are protected by common-law privacy), 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy). However, the public has a genuine interest in information concerning a public employee's job performance and the reasons for dismissal, demotion or promotion. Open Records Decision No. 444 (1986) at 5-6; *see also* Open Records Decision No. 208 (1978) (disciplinary action against public employee available to public).

After a review of the marked documents, we agree with most of the pencil-marked information that you have indicated with purple tabs. We have indicated where we disagree with your markings, and we have marked the information in the affidavit included in Exhibit 3 and labeled as Exhibit "A" that must be withheld under section 552.101 (see blue tabs). The remaining submitted information is not excepted by common-law privacy under section 552.101 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 109194

Enclosures: Marked documents

cc: Ms. Carolyn Z. Cantu
5026 Circle Park West
Pasadena, Texas 77504
(w/o enclosures)