



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 18, 1997

Ms. Anita Stevenson Turner  
Assistant City Attorney  
Law Department - City of Austin  
Norwood Tower  
114 West 7<sup>th</sup> Street  
P.O. Box 1546  
Austin, Texas 78767-1546

OR97-2507

Dear Ms. Turner:

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# 110111.

The City of Austin (the "city") received a request for the names, addresses, phone numbers and gender of all applicants for admission to the police academy beginning August 1997, as well as for the names, addresses, phone numbers and gender of the applicants who were examined by certain doctors, of those who either passed or failed the examination, and of those who were approved to enter the August 1997 class. The requestor also seeks all documents related to her application for admission to the August 1997 police academy, including records related to psychological and physical examinations given to her. You assert that the information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with Chapter 611 of the Health and Safety Code. We have considered your arguments and have reviewed the information submitted.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. We have reviewed the records you have submitted, which include tests and interview information used as part of a psychological evaluation of the applicant. Chapter 611 of the Health and Safety Code generally governs access to mental health records. Section 611.002(a) of the Health and Safety Code provides that: "[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential." Section 611.001(1) includes in its definition of a "patient" for purposes of chapter

611, someone who is "interviewed by a professional for diagnosis, *evaluation*, or treatment of any mental or emotional condition or disorder, including alcoholism or drug addiction." (Emphasis added.) From the information provided, it appears that the psychologist who interviewed the applicant is a "professional" as defined by section 611.001. The requestor was interviewed for the purpose of evaluating her emotional and mental condition or fitness to be a police officer.

However, section 611.0045(a) provides that "[e]xcept as otherwise provided by this section, a patient is entitled to have access to the content of a confidential record made about the patient." Because the requestor is the "patient" for purposes of section 611.0045, she is entitled to access to the submitted records relating to her psychological evaluation, subject to the conditions of section 611.0045.<sup>1</sup>

With regard to the names, addresses, phone numbers and gender of all applicants for admission to the police academy, we note that section 552.117(2) excepts from required public disclosure information relating to the home address, home telephone number, and social security number of a peace officer as defined by article 2.12 of the Code of Criminal Procedure, as well as whether the peace officer has family members, regardless of whether the officer complies with section 552.024. Thus, if any of these applicants are currently peace officers, the city must withhold the home addresses and phone numbers of these officers.

Section 552.101 incorporates the doctrine of common-law privacy.<sup>2</sup> 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 Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474

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<sup>1</sup>Although you state that the requestor "requests copies of psychological examinations and personality tests for herself and all other applicants to the police academy for the class beginning August 1997," we do not find in the request letter which you submitted any request for tests other than those administered to the requestor herself. Nor did you submit examination records for any applicant other than the requestor.

<sup>2</sup>As the release of confidential information under the Open Records Act constitutes a misdemeanor, the attorney general will raise section 552.101 on behalf of a governmental body, although the attorney general will not ordinarily raise other exceptions that a governmental body has failed to claim. See Open Records Decision Nos. 455 (1987) at 3, 325 (1982) at 1.

U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse or the detailed description of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Upon review of the submitted information revealing whether applicants for admission to the police academy received passing scores on the required psychological examination, we conclude that the applicants have a right of privacy in this information, and therefore, it must be withheld from disclosure under section 552.101. *Cf.* Open Records Decision No. 600 (1992) at 6-7 (score on personality test given by Department of Criminal Justice to employee is excepted from public disclosure by constitutional right of privacy; score on intelligence test given to employee is excepted from public disclosure by common-law right of privacy). *But see* Open Records Decision No. 441 (1986) (employee's inability to pass examination designed to measure extent to which he has mastered basic skills thought necessary to perform job adequately should be matter of public record). For your convenience, we have marked the information to be withheld.

In summary, the city must withhold the home addresses and phone numbers of any applicants for admission to the police academy beginning August 1997 who are now police officers, and the information in the submitted list revealing whether applicants for admission to the police academy received passing scores on the required psychological examination. The city must release the remainder of the requested information to the requestor.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 110111

Enclosures: Submitted documents

cc: Ms. Susan Langham  
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(w/o enclosures)