



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 18, 1998

Mr. Homero Ramirez  
Office of the County Attorney  
Webb County  
1110 Victoria, Suite 403  
Laredo, Texas 78040

OR98-2242

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118104.

The Webb County Attorney's Office (the "county attorney") received a request for various information relating to its employees and its personnel policies. You seek to withhold information relating to items 5, 6, 8, and 9.<sup>1</sup> You claim that information relating to these four items is excepted from disclosure under sections 552.102 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The Open Records Act does not require a governmental body to make available information which does not exist, nor does it require a governmental body to prepare new information. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 (1992), 362 (1983). Nevertheless, the county attorney must make a good faith effort to relate a request to information it holds. Open Records Decision No. 87 (1975); see Gov't Code § 552.353 (providing penalties for failure to permit access to public information). You state that your office does not maintain information relating to employees who have resigned or been terminated. You also state that your office does not maintain payroll information on its employees. We note that the information sought in items 5 and 9 is routinely found on

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<sup>1</sup>You have not submitted information relating to remaining requested items. Therefore, we assume that this information has been released to the requestor.

employment applications, payroll documents and other personnel documents maintained by the county. The county attorney should respond to items 5 and 9 of the request by providing the requestor with documents similar to those responsive to item 6 of the request. The county attorney should not deny a request simply because the requestor does not specifically identify the types of documents that contain the information being sought. Therefore, since you have raised no exceptions to disclosure, we conclude that the county attorney must release the information requested in items 5 and 9 unless it is otherwise confidential by law.<sup>2</sup>

Next, you claim that the personnel files of terminated employees are excepted from disclosure under section 552.102. We note at the outset that a governmental body may not withhold a personnel file in its entirety under section 552.102. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Id.* Therefore, 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 at 1 (1992).

You have submitted several personnel files that do not appear to responsive to this portion of the request. We have, however, reviewed these documents and have marked a sample of the information that must be withheld from disclosure. For your convenience, we have also included for your review a sampling of common types of information deemed confidential.

Finally, you assert that the information relating to your office's insurance policy is

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<sup>2</sup>We note that section 552.117 of the Government Code excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the information of a current or former employee or official who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989).

protected from disclosure under section 552.103. Section 552.103(a) excepts from disclosure information:

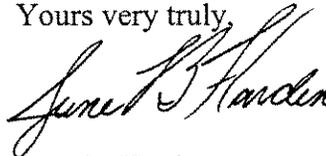
(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). A contested case under the Administrative Procedure Act ("APA") is litigation for purposes of section 552.103(a). Open Records Decision No. 588 (1991). It appears from the submitted materials that a former employee intends to file a grievance challenging her termination. You have not indicated that the employee severance hearing is a contested case under the APA. Nor have you otherwise established that this hearing should be considered litigation for purposes of section 552.103(a). Furthermore, you have not demonstrated how the requested information relates to this proceeding. Consequently, you may not withhold the information requested in item 8 under section 552.103.

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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref.: ID# 118104

Enclosures: Marked documents  
List of Confidential Information

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