



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 5, 1998

Ms. Monica Z. Notzon
First Assistant District Attorney
Counties of Webb and Zapata
P.O. Box 1343
Laredo, Texas 78042-1343

OR98-2620

Dear Ms. Notzon:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119332.

The Webb County District Attorney's Office (the "district attorney") received a request for the following information:

- (1) The hire dates and salaries of investigators and assistant district attorneys who are currently employed by the district attorney.
- (2) Employment applications for these employees.
- (3) Records of disciplinary actions taken in the past five years against these employees in their employment capacity.
- (5) Records of internal investigations into the results and/or disposition of criminal cases.

You submitted what appears to be a representative sample of information concerning an assistant district attorney. We note that when a representative sample of records is submitted to this office, we assume that it is truly representative of the requested records as a whole and do not address other requested records if they contain substantially different types of information. *See* Open Records Decision No. 499 (1988), 497 (1988). You contend that the information requested is protected from disclosure under section 552.102 of the Government Code.

We note initially that the sample records submitted do not contain investigation information or disciplinary information as requested. However, if the district attorney does

not have this type of information, the district attorney need not comply with this portion of the request. Open Records Decision Nos. 452 at 3 (1986) (open records request applies to information in existence when request is received); 362 at 2 (1983) (governmental body does not have to supply information which does not exist).

Section 552.102 provides an exception to disclosure for 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 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 legitimate public concern. *Industrial Found. 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.). The records at issue in general relate to the salary, job performance, and professional qualifications of a public employee. There is a legitimate public interest in the salary of a public employee, his qualifications, and how that employee performs his job functions. Gov't Code § 552.002(2) (name, sex, ethnicity, salary, title, and dates of employment of public employee is generally public information); Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow).

However, we have marked some information that may be protected from disclosure under sections 552.024 and 552.117. Section 552.117 provides that information is excepted from required public disclosure if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

(1) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024;

(2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024; or

(3) an employee of the Texas Department of Criminal Justice, regardless of whether the employee complies with Section 552.024.

The requestor seeks information about investigators employed by the district attorney. If any of these investigators are peace officers, as outlined above, their home telephone numbers, home addresses, social security numbers, and information that reveals whether they have family members is automatically protected from disclosure under section 552.117.

However, as to the investigators who are not peace officers and also the assistant district attorneys, section 552.117 protects their personal information only if they have opted, prior to receipt of the open records request and in writing, to protect this information from disclosure. Gov't Code § 552.024; Open Records Decision Nos. 530 at 5 (1989), 482 at 4

(1987), 455 (1987). We have marked the sample submitted documents to show the type of information that is confidential under section 552.117.

We note also that social security numbers that were obtained or maintained by a governmental body pursuant to any provision of law, enacted on or after October 1, 1990, are confidential pursuant to section 405(c)(2)(C)(viii) of title 42 of the United States Code. Also, driver's license numbers are confidential under section 552.130 of the Government Code. We have marked this information on the submitted documents.

Additionally, we have marked some health information collected by the district attorney on applicants and employees that we believe is confidential under provisions of the Americans with Disabilities Act of 1990 which mandate that health-related information collected on applicants and employees is generally confidential. 42 U.S.C. § 12112; 29 CFR § 1630.14; Open Records Decision No. 641 (1996). The records otherwise 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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 119332

Enclosures: Marked documents

cc: Mr. John Sevigny
Laredo Morning News
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(w/o enclosures)