



February 17, 1999

Mr. Benjamin A. Martinez  
City Attorney  
City of Eagle Pass  
P.O. Box 4019  
Eagle Pass, Texas 78853-4019

OR99-0475

Dear Mr. Martinez:

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# 122121.

The City of Eagle Pass (the "city") received a request for tapes or transcripts of a Grievance Committee Hearing. You submitted tapes of the hearing for our inspection.<sup>1</sup> You claim that the requested information is excepted from disclosure on the basis of common-law privacy. You also discuss section 552.102 of the Government Code.

As a preliminary matter, we note that portions of the tapes are unintelligible. However, the portions which were intelligible to us discussed police officers. Section 552.117 of the Government Code states in pertinent part:

Information is excepted from [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:

...

(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[.]

This office will not ordinarily raise exceptions for a governmental body. However, this office will raise mandatory exceptions such as section 552.117 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Although the

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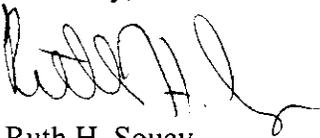
<sup>1</sup>It is our understanding that these tapes are of a grievance committee and not an executive session of the city council.

portions of the tapes that we were able to understand did not disclose section 552.117 information, if the tapes contain information that reveals police officers' home addresses, home telephone numbers, social security numbers, and information about family members, those portions of the tapes must not be disclosed.

You assert that the tapes are protected on the basis of common-law privacy. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). For information to be protected from public disclosure by the common-law right of privacy under either section 552.101 or section 552.102, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. The 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. *Id.* at 683. Having reviewed the tapes submitted, none of the information which we were able to hear contained information which is protected from disclosure under common-law privacy. Although none of the portions of the tapes that we were able to understand are excepted from disclosure on the basis of common-law privacy under either section 552.101 or section 552.102, we note that if such information exists, those portions of the tapes are considered confidential and must be withheld. The tapes 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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Sincerely,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/GLG/ch

Ref: ID# 122121

Enclosures: Submitted audiotapes

cc: Mr. Claudio Heredia  
Knickerbocker, Heredia, Jasso & Stewart, P.C.  
468 Main Street  
Eagle Pass, Texas 78852  
(w/o enclosures)