



June 15, 1999

Mr. Edward Dunbar
Dunbar, Crowley & Hegeman
4726 Transmountain Drive
El Paso, Texas 79924

OR99-1666

Dear Mr. Dunbar:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124847.

The El Paso County Community College District (the "community college"), which you represent, received a request, from an employee, for "copies of the Internal Audit of the Police Department." In response to the request, you submit to this office for review the information at issue. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code, in conjunction with the common law right of privacy. We have considered the exceptions and arguments you have raised and reviewed the submitted information.

Initially, we note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. Although we are not certain when the community college received the open records request, the requestor's written request for information is dated March 1, 1999. You argue that "[b]ecause the college was closed for Spring Break during the entire week of March 15th, the tenth business day from March 1st is . . . March 22nd," therefore, you claim the request for an opinion is timely made. The ten-day deadline is a statutorily imposed deadline. Gov't Code § 552.301. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion.

Hancock v. State Bd. of Ins., 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). Based on your representation, we conclude that the community college has met its ten-day deadline for requesting an opinion from this office.¹

Section 552.101 of the Government Code excepts from required public disclosure “information that is confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses both common-law and constitutional privacy. Under common-law privacy, private facts about an individual are excepted from disclosure. *Industrial Foundation v. Texas Indus. Accident Bd.*, 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 at 1 (1992). Section 552.102(a) protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.). Consequently, we will consider these two exceptions together for the submitted records.

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. Most of the submitted information does not comport with this standard.

Most of the submitted information at issue relates to the performance and behavior of public employees. There is a legitimate public interest in the work behavior of a public employee and how he or she performs job functions. Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). However, a portion of the submitted records contain information which is “highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities.” Accordingly, we have marked the *type* of information that must be withheld under section 552.101. The community college may not withhold any portion of the remaining information under sections 552.101 and 552.102.

¹We further note that the presumption of openness is overcome by a showing that information is confidential by law.

Before we conclude our analysis, we note that although you have not raised any other applicable exception, based on the records at issue, we must consider whether some of the submitted information should be excepted from required public disclosure under sections 552.117 of the Government Code.² Section 552.117 of the Government Code reads in relevant part:

Information is excepted from the [public disclosure] requirements of Section 552.021 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;

Section 552.117(1) requires you to withhold information pertaining to a current or former employee or official who requested that this information be kept confidential under section 552.024. Information may not be withheld under 552.117(1) if the current or former employee elected non-disclosure after this request for information was made. Open Records Decision No. 622 (1994). Section 552.117(2) requires you to withhold information pertaining to a peace officer, without regard to that officer's election under section 552.024. Therefore, we conclude that the information subject to section 552.117(2) must be withheld. *See Gov't Code § 552.352* (distribution of confidential information is criminal offense). We have marked the *type* of information to indicate the information that is or may be subject to section 552.117.

In conclusion, we note that all of the requested information not specifically addressed above must be released to the requestor in its entirety. 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

²The Office of the Attorney General will raise an exception on behalf of a governmental body when necessary to protect third-party interests. *See generally* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref: ID# 124847

Encl: Marked documents

cc: Mr. William McGlothlin
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Valle Verde Campus
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(w/o enclosures)