



July 23, 1999

Mr. James J. Savage
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-2071

Dear Mr. Savage:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126117.

Harris County (the “county”) received a request from an applicant for his own records. You submitted a “confidential information agreement form” signed by the applicant stating that he agrees that all information, including test results, will be confidential. You assert that the information is thus confidential and may not be released to the applicant. You also assert the privacy interests of those individuals who provided references and background information to the county. We will address your arguments against disclosure of these records to the requestor.

In Open Records Decision No. 283 (1981), a police department trainee who had signed a confidential information agreement form requested her own personnel file. This office ruled that the records at issue could not be withheld from the requestor because the agreement did not waive her right to obtain the records under the Public Information Act.¹ *Id.* This is the same type of situation.² The requestor seeks the records under the Public Information Act

¹You cite to Open Records Decision No. 455 (1987) for your argument that there is a difference in the right to privacy of an applicant versus an employee. In Open Records Decision No. 455 (1987) this office concluded that the predecessor statute to section 552.117 of the Government Code protects certain personal information about employees and former employees, but that the statute does not extend to applicants.

²You assert this situation is similar to that in Open Records Decision No. 284 (1981). In that ruling, this office agreed that confidentiality agreements which were entered into prior to the effective date of the Public Information Act were enforceable. This agreement was not entered into prior to that effective date of June 14, 1973.

and is entitled to those records unless an exception to disclosure protects the records from release. We will address your argument concerning the privacy rights of the people who provided reference and background information concerning the requestor.

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 both common-law privacy and constitutional privacy. The test to determine whether information is private and excepted from disclosure under common-law privacy 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 constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 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 at 4 (1992). 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.*

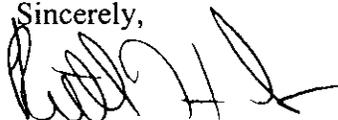
The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (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 at 5 (1987) (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), and 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), and information concerning the intimate relations between individuals and their family members. *See* Open Records Decision No. 470 (1987). We have reviewed the submitted information and conclude that none of the background information or reference information is protected from disclosure on the basis of either common-law or constitutional rights of privacy. *See*

Open Records Decision No. 284 (1981) (letters of reference generally not protected by right to privacy). The information at issue must be released to the requestor.³

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.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 126117

Encl. Submitted documents

cc: Mr. Patrick E. Sloan
1308 S. Park
Brenham, Texas 77833
(w/o enclosures)

³We need not address whether any of the records at issue contain information that is generally confidential concerning the applicant, since the requestor seeks his own records.
Gov't Code § 552.023.