



September 8, 1999

Ms. Kathleen Weisskopf  
Assistant City Attorney  
Mail Stop 04-0200  
P.O. Box 1065  
Arlington, Texas 76004-1065

OR99-2494

Dear Ms. Weisskopf:

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# 127085.

The City of Arlington (the "city") received a request for "the investigator's handwritten notes and Chief Brashiers [sic] affidavit." In response to the request, you submit to this office for review the information which you assert is responsive. You state that the city will make available to the requestor some responsive information. You contend, however, that the submitted records are excepted from required public disclosure by sections 552.101 and 552.102 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the submitted information.<sup>1</sup>

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 must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a

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<sup>1</sup>We note that this office has previously addressed certain related matters. In Open Records Letter No. 99-1234 (1999), the city requested a ruling from this office concerning information relating to a particular complaint investigated by the city's human resources department. We further note that in Open Records Letter No. 99-1945 (1999), this office addressed a request submitted to the city for "[d]ocuments relating to sexual harassment cases involving city employees from October 1998 to present." We are unable to determine whether the responsive affidavit was submitted in response to the prior requests for information.

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. The submitted information 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). After reviewing the document at issue, we note that although we disagree with your markings, we agree that a portion of the information, which we have marked must be withheld from the public under section 552.101 in conjunction with privacy.

However, we note that the right of privacy is personal to an individual. *See generally* Attorney General Opinion H-917 (1976); Open Records Decision No. 272 (1981). In this instance, some of the information excepted from disclosure pursuant to privacy concerns the requestor. We note that while the information about this particular requestor is not available to the public at large or other requestors for this information, the individual requestor whose right of privacy is implicated by the request has a special right of access to it under section 552.023 of the Government Code.<sup>2</sup> *See* Open Records Decision No. 481 (1987). Accordingly, while the marked portion of the submitted document is subject to privacy, in this case the requestor is entitled to the information implicating her privacy. However, this information is excepted from required disclosure to the public under section 552.101 of the Government Code in conjunction with the common-law right to privacy. We further note that a portion of the submitted information, marked by our office as excepted from disclosure to the public but subject to release to this particular requestor under section 552.023, is subject to another individual’s common-law privacy. We

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<sup>2</sup>Section 552.023 grants an individual or an individual’s representative access to information that is otherwise excepted from required public disclosure based on a law that protects that individual’s privacy interests. *See* Open Records Decision No. 587 (1991).

have highlighted, in yellow, this other information subject to the common-law privacy of a third-party, which must be withheld from the requestor.

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,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the typed name.

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/nc

Ref.: ID# 127085

Encl.: Marked documents

cc: Ms. Laura E. Parent  
213 Shadowcreek Lane  
Burleson, Texas 76028  
(w/o enclosures)