Office of the Attorney General
State of Texas

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ATTORNEY GENERAL

February 6, 1992

Mr. J. Kirk Brown
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Institutional Division
P. O. Box 99
Huntsville, Texas 77342-0099

Open Records Decision No. 600

Re: Availability under Open Records Act of personnel records of employees of the Texas Department of Criminal Justice (RQ-103)

Dear Mr. Brown:

The Institutional Division of the Texas Department of Criminal Justice has received two requests under the Texas Open Records Act, V.T.C.S. art. 6252-17a, for information in the personnel files of certain employees of the division. You mention several categories of information in the personnel files that you believe are excepted from public disclosure by sections 3(a)(1), 3(a)(2), 3(a)(11), and 3(a)(17) of the Open Records Act.

Employee Home Address and Family Information

All of the files contain an Employee Information Sheet, which includes the employee's home address and family information, such as spouse's name, names and ages of children, names of next of kin and their addresses, and persons other than spouse to notify in case of injuries. Other documents in the file, such as applications for health insurance, contain the employee's home address and family information. You claim that this information is excepted from disclosure by sections 3(a)(1), 3(a)(2), and 3(a)(17) of the Open Records Act.

Section 3(a)(17) of the Open Records Act was amended by House Bill 729 of the 72d Legislature, effective May 8, 1991, to provide an exception for the following information:

> (B) the home addresses, home telephone numbers, or social security numbers of employees of the Texas Department of Criminal Justice, or the home or employment addresses or

> telephone numbers or the names or social security numbers of their family members.

You have asked us to apply this new provision to the request before us. The amendment to section 3(a)(17) makes some of the requested information confidential, even though the application for information was made before the provision became effective.

In *Houston Indep. School Dist. v. Houston Chronicle Publishing Co.*, 798 S.W.2d 580 (Tex. App.--Houston [1st Dist.] 1990, writ denied), the court determined that a newly enacted exception to the Open Records Act applied to the records sought in the mandamus action before it, in which a newspaper sought college transcripts of school district administrators. The district court granted the petition for writ of mandamus and ordered the school district to produce the transcripts for in camera inspection so it could determine which portions of the transcripts were protected from disclosure by law.

Soon after the trial court issued its order, an amendment to section 3(a)(2) of the Open Records Act that excepted college transcripts of professional public school employees from disclosure was signed into law and became effective immediately. *See generally* Open Records Decision No. 526 (1989). The appellate court in *Houston Independent School District* determined that the recent amendment governed the Houston Chronicle's request, and that the newspaper had not obtained a vested right to the transcripts before the amendment became law. 798 S.W.2d at 589. Section 7(b) of the Open Records Act provides that an applicant for information may not obtain the records:

> until a final determination has been made by the attorney general or, *if suit is filed under the provisions of this Act*, until a *final decision* has been made *by the court* with jurisdiction over the suit.

798 S.W.2d at 589 (emphasis in court's opinion). The district court had not reached a final decision on the status of the transcripts before the amendment to section 3(a)(2) became effective, because the outcome of the newspaper's attempts to obtain the information was not certain at that time. *Id.* at 590.

As of the effective date of House Bill 729, no final decision had been reached on the availability of personnel file information before us. Thus, the persons

seeking access to it have no vested right to access in accordance with the pre-amendment text of the Open Records Act. We conclude that section 3(a)(17)(B) adopted by House Bill 729 applies to this decision. Accordingly, you may withhold the home addresses, home telephone numbers, and social security numbers of employees of the Department of Criminal Justice, and the names, addresses, telephone numbers and social security numbers of their family members from all records in the personnel files, including the Employee Information Sheets and applications for insurance coverage.

Psychological and Intelligence Test Results

You state that the department at one time administered psychological and intelligence tests to employees in connection with hiring and orientation. One of the personnel files includes the employee's score on an I.Q. exam while another includes the employee's score on the Minnesota Multiphasic Personality Inventory (MMPI). You believe the results of these examinations are protected from public disclosure by a right of privacy recognized under section 3(a)(1) of the Open Records Act.

Section 3(a)(1) of the Open Records Act excepts the following information from disclosure:

> information deemed confidential by law, either Constitutional, statutory, or by judicial decision.

Section 3(a)(1) applies to information made confidential by constitutional and common-law rights of privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The constitutional right of privacy protects information related to the "zones of privacy" recognized by the United States Supreme Court. *Industrial Foundation*, 540 S.W.2d at 678-80 (citing *Roe v. Wade*, 410 U.S. 113 (1973) and *Paul v. Davis*, 424 U.S. 673 (1976)).[1] The "zones of privacy" recognized by the United States Supreme Court are

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[1]In *Texas State Employees Union v. Texas Dep't of Mental Health & Mental Retardation*, 746 S.W.2d 203 (Tex. 1987), the Texas Supreme Court held that the Texas Constitution protects personal privacy from unreasonable intrusion. The court stated that the Texas Constitution contains no express guarantee of a right of privacy, but it does contain several provisions similar to those in the United States Constitution that have been recognized as implicitly creating protected "zones of privacy." 746 S.W.2d at 205.

limited to certain intimate personal relationships and activities: marriage, procreation, contraception, family relationships, and child rearing and education. *Id.*

However, federal court decisions have found that the constitutional doctrine of privacy can extend beyond the zones of privacy, based on the reasoning of the Supreme Court in *Whalen v. Roe*, 429 U.S. 589 (1977). *See McKenna v. Fargo*, 451 F. Supp. 1355, 1380 (D.N.J. 1978). At issue in *Whalen* was a New York statute requiring prescriptions for controlled drugs to state the name, address, and age of the patient, in addition to other information. Data from the prescription forms was stored in a central computer subject to regulations limiting access to the data and requiring it to be destroyed after five years. The Supreme Court identified at least two kinds of privacy interests within the constitutional doctrine of privacy: the individual interest in independence in making certain important personal decisions, and the individual interest in avoiding disclosure of personal matters to the public or to the government. 429 U.S. at 599. The Supreme Court found that the privacy interest in not disclosing personal information to the government was not unduly burdened by the statutory scheme. In addition, the statute included security provisions designed to prevent disclosure of the prescription information to the public. *Id.* at 601-02.

On the basis of *Whalen v. Roe*, the Fifth Circuit Court of Appeals has found that intimate personal matters outside the zones of privacy may be protected by a constitutional right of privacy, unless there is a legitimate state interest that outweighs the threat to the individual's privacy. In *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985),[2] the court stated as follows:

> The liberty interest in privacy encompasses two notions: the freedom from being required to disclose personal matters to the government and the freedom to make certain kinds of decisions without governmental interference. The disclosure strand of the privacy interest in turn includes the right to be free from the government disclosing private facts about its citizens and from

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[2]*Texas State Employees Union, supra*, note 1, involved a policy of the Texas Department of Mental Health and Mental Retardation that required employees to submit to polygraph exams in connection with investigations of suspected patient abuse, theft, or other criminal activity in the department's facilities. Thus, this case dealt with an aspect of disclosural privacy identified as the right to be free from the government's inquiry into matters in which it did not have a legitimate concern.

> the government inquiring into matters in which it does not have a legitimate and proper concern. (Citations omitted.)

See also Fadjo v. Coon, 633 F.2d 1172, 1176 (5th Cir. 1981); Open Records Decision No. 455 (1987).

We will consider whether disclosure of the MMPI examination results would violate the employee's right to be free from the government's disclosure of private information. The MMPI has been defined as a "personality questionnaire consisting of 550 statements concerning behavior, feelings, social attitudes, and frank symptoms of psychopathology." CAMPBELL, PSYCHIATRIC DICTIONARY 640 (5th ed. 1981). It assumes certain "components" of the personality, such as tendencies toward hysteria, hypochondria, or mood swings, and scores people as to these traits on a numerical scale to compare them to established norms. 18 ENCYCLOPEDIA AMERICANA, *Mental Tests* 649, 650 (1976); 2 AM. JUR. Proof of Facts 3d *Facial Injuries* § 14 (1988). This kind of test is used to examine an individual's feelings and attitudes in an attempt to elicit information about his personality characteristics. The report of an individual's MMPI scores thus purports to reveal highly intimate information about him, including negative characteristics.

We are assisted in our determination as to the MMPI scores by the case of *McKenna v. Fargo*, *supra*, which addressed a similar issue. 451 F. Supp. 1355. The plaintiffs challenged the validity of a city requirement that applicants for the position of firefighter undergo psychological testing. After reviewing extensive evidence about the psychological tests given and the nature of the firefighter's job,[3] the judge ruled that the applicants' right to privacy was burdened, but the intrusion was justified by the governmental interest in screening out applicants who could not stand the job pressures. The court stated that there would be no reason to allow public disclosure or disclosure beyond the city personnel who used the data, and ruled that the city would be required to adopt regulations governing access to the test and to the length of time for which the test data was retained. Subject to the promulgation of such rules, the court found that the testing requirement was not unconstitutional. 451 F. Supp. at 1382.

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[3]The judge found "good reason to scrutinize a government requirement which joins the words psychology and testing. Psychology is not yet the science that medicine is and tests are too frequently used like talismanic formulas." *McKenna v. Fargo*, 451 F. Supp. 1355, 1357 (D.N.J. 1978).

On the basis of *Whalen v. Roe* and *McKenna v. Fargo*, we conclude that the MMPI score in the employee's file is excepted from disclosure by section 3(a)(1) of the Open Records Act as information deemed confidential by a constitutional right of privacy.

We turn now to the employee's I.Q. score. In the *Industrial Foundation* case, the Texas Supreme Court stated the following test for deciding whether a common-law right of privacy prevents a governmental body from disclosing information in response to an application under the Open Records Act:

> [I]nformation . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. If the information meets the first test, it will be presumed that the information is not of legitimate public concern unless the requestor can show that, under the particular circumstances of the case, the public has a legitimate interest in the information notwithstanding its private nature.

540 S.W.2d at 685.

Prior decisions of this office have not dealt with I.Q. scores, although the decisions of this office and a judicial decision have determined that various records of a licensee's or public employee's academic performance are not excepted from public disclosure by a right of privacy. *See Klein Indep. School Dist. v. Mattox*, 830 F.2d 576 (5th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988); Open Records Decision Nos. 467 (1987) (college transcripts of public school teachers); 441 (1986) (teacher's performance on Texas Examination of Current Administrators and Teachers (TECAT)); *see also* Open Records Decision Nos. 157 (licensed engineer's college transcript and scores on state licensing exam), 154 (1977) (scores on civil service examination). These opinions state that transcripts of grades and scores on state licensing exams are not "intimate or embarrassing" and thus do not meet the first branch of the test for common-law privacy, but even if they did, the public has a legitimate interest in knowing information directly related to a person's job qualifications, in particular, qualifications to teach. *See, e.g., Klein Indep. School Dist. v. Mattox, supra*; Open Records Decision Nos. 467, 441.

An intelligence test purports to measure an underlying ability, not to acquire information. 9 ENCYCLOPEDIA AMERICANA, *Education* 642, 715 (1976) (see section 11 regarding "educational measurement"). Since an I.Q. test purports to measure an innate ability of the person and to rank him for this ability in relation to other persons, it differs from the transcripts of grades that have been addressed in previous decisions. We believe the score is highly intimate information, the publication of which would be highly offensive to a reasonable person. It may also be embarrassing information. Thus, it meets the first branch of the test for common-law privacy. Given the nature of the employee's duties, we find no legitimate public interest in disclosing this score. Accordingly, the I.Q. score is excepted from required disclosure by a common-law right of privacy recognized under section 3(a)(1) of the Open Records Act.

Information About On-The-Job Injuries

You state that some of the files include reports relating to on-the-job injuries. You do not object to releasing information about the fact that an employee has been injured on the job, but you believe that it would be unduly intrusive to disclose medical information in the files. Medical records created by or under the supervision of a physician or maintained by a physician are excepted from disclosure under section 5.08(b) of article 4495b, V.T.C.S., the Medical Practice Act. Open Records Decision No. 324 (1982). Copies of prescriptions and a physician's note are excepted by this provision, as are clinic notes prepared by a nurse acting under a physician's supervision.

The files also include the injured person's report to his supervisor and witness statements about on-the-job accidents and injuries. Whether or not such a report contains private information will depend on the nature of the injury and of the details of the accident it provides. *See, e.g.*, Open Records Decision No. 470 (1987) (fact that employee broke out in hives because of job-related emotional stress is private information). The witness reports in the personnel files describe the occurrence of several minor on-the-job injuries, for example, a twisted back from a slip and fall on newly mopped floor, a cut to forearm from the broken side mirror of a vehicle, a foreign object in the eye, insect bites to face and neck, and a cut to left index finger while moving a bench.

The reports of these on-the-job injuries are not excepted from disclosure by either a common-law right of privacy recognized under section 3(a)(1) or the privacy accorded personnel file information by section 3(a)(2) of the Open Records Act.

None of the accident reports contain highly intimate or embarrassing facts about the employee's private affairs so that its release would be highly objectionable to a reasonable person. *Industrial Foundation, supra.* Thus, the reports do not meet the first branch of the two-part test for common-law privacy set out in *Industrial Foundation* and we need not reach the second branch of the test: whether the information is of legitimate interest to the public. Personnel file information is confidential under section 3(a)(2) only if its release would cause an invasion of privacy under the test articulated for section 3(a)(1) of the Open Records Act. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Thus, this exception does not apply to the injured person's report to his supervisor, or to the witness reports.

Income Tax Form

The files contain copies of the Employee's Withholding Allowance Certificate, Form W-4 of the Internal Revenue Service. The W-4 form states the employee's name and address, his social security number, marital status, total number of withholding allowances he is claiming, certain other information about withholding, and whether he is a full-time student. Prior decisions of this office hold that title 26, section 6103(a), of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 226 (1979) (W-2 forms). "Return information" is defined by federal law to include:

> a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

26 U.S.C. § 6103(b)(2)(A).

This term has been interpreted broadly by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). The information in a W-4 form is data collected by the I.R.S. regarding a taxpayer's liability and therefore is within the broad prohibition of section 6103 of the Internal Revenue Code. You must withhold the W-4 form in its entirety.

Financial Information

The files include forms showing the employee's participation in the group insurance program and Employees Retirement System, social security leveling, and TexFlex. Prior decisions of this office have found that financial information relating to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 545 (1990); 373 (1983). A public employee's allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common-law right of privacy. Open Records Decision No. 545 (deferred compensation plan).

Applications for group insurance are included in the personnel files. The state provides life, accident, and health benefits coverages to state employees pursuant to article 3.50-2 of the Insurance Code, paying a monthly contribution toward the cost of each employee's group coverage from funds appropriated for that purpose, with a salary deduction for payments in excess of the state contribution. Ins. Code art. 3.50-2, § 14. A state employee's participation in group insurance coverage is automatic unless it is specifically waived or the employee is expelled from the program. *Id.* § 13(b). An employee is also entitled to secure coverage for his dependents, with a salary deduction or reduction as necessary to make payments in excess of employer contributions. *Id.* § 19(a).

Because the employee's participation in the group insurance program is funded in part by the state, it involves him in a transaction with the state. Information about the essential features of this transaction is therefore not excepted from disclosure by a right of privacy. In our opinion, the legitimate public interest in the employee's enrollment in the group insurance program extends to information in the following sections of the enrollment form: section A, Employee Data, section

B, Transaction, and section C, Coverage Data, Employee Type and Health Coverage. These items give the employee's name and indicate whether he declined all coverages. If he accepted coverage, the form gives his monthly salary, whether he is full-time or part-time, and whether the employee's health coverage is for the employee only, the employee and spouse, employee and children, or employee and family. Enrollment in the basic plan has generally been funded in whole or large part by the state, and the appropriations acts adopted in 1989 and 1991 provide a larger contribution for employees enrolled in a coverage category that includes a spouse and/or a dependent. *See generally* General Appropriations Act, Acts 1991, 72d Leg., 1st C.S., ch. 19, at 465; General Appropriations Act, Acts 1989, 71st Leg., ch. 1263, at 5216; Attorney General Opinions JM-115 (1983); MW-215 (1980); H-859 (1976). The legitimate public interest extends to information showing that the employee has enrolled persons in addition to himself in the state insurance plan. The employee's social security number and home address in section A are excepted by newly adopted section 3(a)(17)(B) of the Open Records Act.

The remaining information is not available to the public. The rest of section C states the employee's choice of carrier and whether he has chosen, in addition to health coverage, optional life, accident, dependent life, or disability income. The employee's optional coverages will generally be funded by the employee and not the state. His decision to enroll for these coverages is a personal financial decision to allocate part of his compensation to optional benefits; thus, the related information is excepted from disclosure by a right of privacy. Section D includes information about the employee's dependents and identifies the beneficiary of his life insurance. This additional information about the persons who benefit from these coverages is also excepted from disclosure by a common-law right of privacy. We have marked the application form identified as C-15 to show which items may be withheld.

An employee may request that the state's payment toward his social security contribution be leveled, or prorated over the calendar year. Since the state's contribution is a percentage of the first $16,500 of the employee's compensation, leveling alleviates the fluctuation in net pay that otherwise occurs when the employee begins to pay the full monthly contribution. V.T.C.S. art. 695h, § 5(a). You suggest that an employee's decision whether or not to level the state's payment for social security is private information. This decision is one aspect of the employee's receipt of compensation from the state as employer. It affects the timing of his receipt of compensation and the amount of each paycheck, but not the total annual compensation. It is a "basic fact" about a transaction between the individual and the state and is therefore not excepted from public disclosure by a right

of privacy. Open Records Decision Nos. 545, 373; *see also* V.T.C.S. art. 6252-17a, § 6(2) (salaries of public employees generally open to the public).

You indicate that information about the employee's participation in the Employees Retirement System is also private. The only documents relating to retirement that we find in the files are forms designating the beneficiary of the employee's retirement benefits. These forms are excepted from disclosure by a common-law right of privacy for the same reasons that an employee's designation of his life insurance beneficiary is confidential.

The files include forms showing the employee's decision on participation in TexFlex, a "cafeteria plan" as defined and authorized by section 125 of the Internal Revenue Code of 1986 and established by the trustee of the Employees Retirement System pursuant to section 13B of article 3.50-2 of the Insurance Code. *See* Ins. Code art. 3.50-2, § 3(17). A cafeteria plan is an employee benefit plan that allows an employee to choose between cash compensation and one or more tax-exempt fringe benefits. Attorney General Opinion JM-543 (1986). The TexFlex forms included in the personnel files allow an employee to allocate his pretax compensation to one or more of the following benefits: group insurance premiums, health care, or dependent care. A participant in the health care or dependent care options must allocate a certain amount of his salary each month to a reimbursement account, from which he seeks reimbursement for his expenditures for health care or dependent care. An employee may decline all participation in TexFlex.

We believe that an employee's decision whether or not to allocate some of his compensation to TexFlex benefits, as well as a participant's choice of TexFlex benefits, is a personal financial decision analogous to a state employee's decision to participate in the deferred compensation plan that was the subject of Open Records Decision No. 545. We see no legitimate public interest in the employee's decision as to participation in TexFlex. Accordingly, the TexFlex forms are excepted from public disclosure by section 3(a)(1).

State employees, including prison employees, may arrange to have their paychecks deposited directly to their bank accounts.[4] Some of the files include

[4]Beginning January 1, 1992, all state employees are required to receive their salaries by direct deposit, except under limited circumstances. Gov't Code § 403.016. Because the election forms at issue here were prepared before the effective date of section 403.016, this provision is inapplicable to them. An analysis of the new law, however, would require the same result.

direct deposit authorization forms filled out by the employee, showing his decision as to the direct deposit of his compensation, the name of his bank, and his account number. These forms are excepted from public disclosure by section 3(a)(1) for the same reasons discussed in connection with TexFlex forms.

Services Provided By Employer

Employees of the division are entitled to certain services provided at cost. Some employees reside in state housing, for which they may pay rent and utilities. All employees are entitled to laundry and barber service benefits, provided at laundries and barber shops in the prison units. Employees may also purchase items in the prison commissary using a prepaid account. Access to these services is part of the employee's compensation. *See* Gov't Code § 494.007; Acts 1991, 72d Leg., ch. 19, at 445-53. The personnel files before us include Employee Services Option forms offering the employee laundry services and barber shop services for a fee to be deducted from his paycheck. An arrangement whereby the prison system provides services to employees in exchange for a fee is a transaction between the governmental body and the employee; accordingly, there is a legitimate public interest in the facts of these transactions. The Employee Services Option forms are available to the public under the Open Records Act.

Information Identifying Inmates

Some of the files include letters by the Internal Affairs Division stating the disposition of a complaint that the employee violated the use of force plan or other departmental policy. Such letters often identify the inmate who was the subject of the investigation. You state that you believe the inmate's identity is not a matter of public record, but you do not cite an exception to the Open Records Act, nor do you explain why it might be private information. *See* Open Records Decision Nos. 363 (1983); 252 (1980). If you do not state how and why a particular exception applies to this information, we have no basis to determine that it is excepted from disclosure.

We wish, however, to raise the possibility that the inmate's identity is not information subject to our decision under the Open Records Act. Open Records Decision No. 560 (1990) dealt with records of the Texas Department of Criminal Justice that were created and maintained pursuant to federal court order, the *Stipulated Modification of Section II, D and Section II, A of the Amended Decree* of the *Ruiz Amended Decree*. *See Ruiz v. Estelle*, 503 F. Supp. 1265 (S.D. Tex. 1980),

aff'd in part and vacated in part, 679 F.2d 1115 (5th Cir.), *amended in part*, 688 F.2d 266 (5th Cir.), *cert. denied*, 460 U.S. 1042 (1982). The *Stipulated Modification* requires the division to ensure that inmates do not have access to sensitive information, defined to include use of force reports. Open Records Decision No. 560 stated that the use of force reports are created and maintained pursuant to federal court order, and that it is not a proper function of the opinion process to attempt to construe that order in addressing an application for information under the Texas Open Records Act.

We cannot determine from the face of these letters whether the reference to an inmate's identity constitutes information subject to the *Stipulated Modification*. If it is, however, you should seek advice from the federal court as to the availability of this information.

Personnel Evaluations

You believe that the personnel evaluations in the files are excepted from disclosure by section 3(a)(11), which excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." The purpose of this exception is to protect from public disclosure advice, opinion, and recommendation used in the decisional process with an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd, n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). You have marked the employee evaluations in the personnel files to identify the information excepted from disclosure by section 3(a)(11). We agree that the information you have marked is excepted from disclosure by section 3(a)(11).

Additional Documents Containing Personal Information

You state that personal information is sometimes found in other documents in personnel files, such as the fact that an individual has been summoned to jury duty, called to reserve duty, or has requested a transfer. You believe that this information is private.

You may withhold from disclosure any information on these documents that is within section 3(a)(17)(B) of the Open Records Act. The fact that an employee

has been summoned to jury duty, called to reserve duty, or requested a transfer is not intimate or embarrassing information. Although his reasons for requesting a transfer may in some cases be private, the reasons given in the transfer request in the files before us do not involve intimate or embarrassing information.

The files also include information about employees' personal connections with inmates, such as knowing an inmate before he was imprisoned. You state that this information assists managers in avoiding conflicts between an employee's official responsibility and personal relations. You state that this information is private; however, it does not constitute private information on its face, and you have not explained why it constitutes intimate or embarrassing information, the disclosure of which would be highly objectionable to a reasonable person. Accordingly, it is open to the public. The remaining information in the files is not within any of the exceptions you raise and is accordingly open to the public.

SUMMARY

The Institutional Division of the Texas Department of Criminal Justice received requests under the Texas Open Records Act, V.T.C.S. art. 6252-17a, for information in the personnel files of certain employees. Several categories of information were found to be excepted from public disclosure.

Section 3(a)(17)(B) of the Open Records Act, adopted by House Bill 729 of the 72d Legislative Session and effective May 8, 1991, excepts from disclosure the home addresses, home telephone number, or social security numbers of employees of the Texas Department of Criminal Justice. It also excepts the home or employment address or telephone numbers or the names or social security numbers of family members of employees of the department. This information is excepted from disclosure wherever it appears in the personnel files.

The result of a personality test given by the Department of Criminal Justice to an employee is excepted from public disclosure by a constitutional right of privacy. The score on an intelligence test given to an employee is excepted from public disclosure by a common-law right of privacy.

Information about on-the-job injuries in medical records created by or under the supervision of a physician or maintained by a physician is excepted from public disclosure by section 5.08(b) of article 4495b, V.T.C.S. Whether or not a report by the injured person or a witness to the accident contains private information depends on the nature of the injury and other facts included in the report.

The W-4 forms completed by employees are excepted from disclosure by title 26, section 6103(a), of the United States Code.

TexFlex forms, showing the employee's decision about participation in this benefit program, concern a private financial decision to allocate compensation to optional benefits provided by a third party; thus these forms are excepted from public disclosure by a common-law right of privacy. Forms authorizing the direct deposit of the employee's paycheck also document a private decision as to allocation of compensation to a third party and are excepted from disclosure.

Authorizations for social security leveling include facts about the employee's receipt of compensation from the state as his employer and are not excepted from disclosure by a right of privacy.

The employee's participation in the group insurance program is in part a transaction with the state. Information on his application form relevant to his enrollment for basic and dependent health coverage offered pursuant to article 3.50-2 of the Insurance Code is not excepted from disclosure by a common-law right of privacy. Certain information on the form is excepted from disclosure by section 3(a)(17)(B) of the Open Records Act. The remaining information on optional coverages, dependent information, and designation of a beneficiary of his life insurance is excepted from disclosure by a right of privacy.

Employee Services Option forms, which offer the employee laundry services and barber shop services at prison facilities in exchange for a small fee, relate to a transaction between the

employee and the governmental body and are therefore not excepted from disclosure by a right of privacy.

Information in personnel evaluation forms that consists of opinion, advice, and recommendation used in the decisional process within the agency is excepted from disclosure by section 3(a)(11) of the Open Records Act.

Very truly yours,

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