



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 27, 1994

Mr. Robert E. Luna  
Law Offices of Earl Luna, P.C.  
4411 Central Building  
4411 N. Central Expressway  
Dallas, Texas 75205

OR94-592

Dear Mr. Luna:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 26858.

The Duncanville Independent School District (the "district"), which you represent, has received a request "for all documents pertinent to the complaint [the requestor] made against Deborah Louis-Ray regarding her memo dated April 27, 1994." You have sent four documents that you believe are responsive to the request. One of the documents is the April 27, 1994, memorandum, which the requestor already has received. One of the documents is the requestor's written request for information. The other two documents are memoranda to Ms. Louis-Ray from district personnel. You contend that the district may withhold these two memoranda pursuant to sections 552.101, 552.102, and 552.111 of the Government Code. You have submitted the requested information for our review. See Gov't Code § 552.303 (requiring governmental body that seeks open records decision from attorney general to submit to attorney general's office "specific information requested").

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You have cited no statutes that render the requested information confidential, nor are we aware of any. You contend that the requested information is confidential under constitutional law.

The constitutional right of privacy protects information that falls within one of the "zones of privacy" the United States Supreme Court has articulated,<sup>1</sup> see *Paul v. Davis*, 424 U.S. 693 (1976); *Roe v. Wade*, 410 U.S. 113 (1973), as well as an individual's interest in avoiding the disclosure of personal matters to the public or to the government. Generally, the constitutional right of privacy protects information that is not within one of the zones of privacy only if it relates to the most intimate aspects of human affairs. See *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986).

We have examined the information you submitted for our review. It does not pertain to matters within a constitutional zone of privacy, nor does it relate to the most intimate aspects of human affairs. Accordingly, we conclude that the constitutional right of privacy, incorporated into section 552.101 of the Government Code, does not protect the requested information from required public disclosure.

Additionally, we understand you to argue that the requested information is confidential by judicial decision, *i.e.*, under the common law. The Texas Supreme Court, in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), articulated a two-pronged test that we use to determine whether information is confidential under the doctrine of common-law privacy and therefore exempt from required public disclosure under section 552.101. Under the test, information is confidential if (1) it contains highly intimate or embarrassing facts about an individual's private affairs such that the release of the information would be highly offensive to a reasonable person and (2) the public has no legitimate interest in it. *Industrial Found.*, 540 S.W.2d at 685.

You contend that the requested information is private under the common law because it references a violation of the Duncanville Board of Trustees Policy and the Code of Ethics and Standard Practices for Texas Educators and is therefore intimate and embarrassing. Additionally, you aver that the disciplinary action the memoranda reference does not involve classroom teaching. We will assume that the conduct for which Ms. Louis-Ray was disciplined did not involve classroom teaching. We disagree that this assumption compels us to conclude that the requested information concerns her personal affairs, however.

The conduct for which the district disciplined Ms. Louis-Ray appears to have been motivated by incidents that occurred at a school function. In her April 27, 1994, memorandum, Ms. Louis-Ray resigned from a position on a Duncanville High School committee that she held as a teacher. District personnel, in their capacities as employees

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<sup>1</sup> Matters falling within one of the constitutional "zones of privacy" include matters pertaining to marital activities, procreation, contraception, family relationships, and child rearing and education. See *Paul v. Davis*, 424 U.S. 693 (1976); *Roe v. Wade*, 410 U.S. 113 (1973).

of the district, responded to the incidents in written memoranda addressed to Ms. Louis-Ray. Furthermore, one of the memoranda cites as justification for the disciplinary action against Ms. Louis-Ray the district policy as well as the Code of Ethics and Standard Practices for Texas Educators.

In our opinion, the requested information is of legitimate public interest. Furthermore, we do not believe the requested information contains highly intimate or embarrassing facts about an individual's *private* affairs. We therefore conclude that the requested information is not confidential under the common-law doctrine of privacy. Section 552.101 does not authorize the district to withhold the requested information from the requestor.

You next raise section 552.102 of the Government Code, which excepts from required public disclosure information in a personnel file, "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The Texas Court of Appeals determined, in *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.), that information is confidential under section 552.102 if it satisfies the test the Texas Supreme Court set forth in *Industrial Foundation* for information deemed confidential by law under section 552.101 of the Government Code. We have determined already that the requested information is not confidential under section 552.101. Accordingly, section 552.102 does not except the requested information from required public disclosure.

Finally, you cite section 552.111 of the Government Code. Section 552.111 of the Government Code authorizes a governmental body to withhold from required public disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) at 5 this office construed the statutory predecessor to section 552.111 as follows:

We conclude that section [552.111] excepts from disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. Section [552.111] does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. . . . [W]e stress that . . . to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. [Footnote deleted.]

To the extent the requested information consists of advice, opinion, or recommendation, we do not believe that it relates to the district's policymaking functions. Rather, the information relates to a routine personnel matter. Accordingly, we conclude that section 552.111 does not authorize the district to withhold the requested information from the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymlberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

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Ref.: ID# 26858

Enclosures: Submitted documents

cc: Ms. Nahsechay Fahloke  
c/o Duncanville Independent School District  
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(w/o enclosures)