



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 18, 1996

Mr. M.B. Donaldson
Superintendent of Schools
Alpine Independent School District
14910 Aldine-Westfield Road
Houston, Texas 77032

OR96-2137

Dear Mr. Donaldson:

By letter received in this office on August 22, 1996, you ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101748.

On August 12, 1996, the Aldine Independent School District (the "district") received a request for information relating to pending criminal cases involving current or former employees of the district police department and information relating to a number of administrative actions involving current or former employees of the district police department.¹ You contend that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.108 of the Government Code. You have submitted a representative sample of the requested information to this office for review.²

You have determined that there are no pending criminal cases involving current or former employees of the district police department. Although the requestor is not seeking information relating to closed criminal cases, you claim that information relating to closed criminal cases is

¹This ruling addresses only the disclosure of information responsive to the August 12, 1996 request. We note the requestor's complaint that the district failed to timely respond to a prior, separate request that he made on July 3, 1996. However, according to the information submitted to this office by the requestor, the district has responded to the July 3, 1996 request by making the requested information available to the requestor.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

excepted from disclosure under section 552.108. Because information relating to closed criminal cases is not responsive to the request and is not at issue here, we do not address your section 552.108 claim.

The representative sample of information you submitted to this office includes information relating to pending and closed administrative actions. You claim that part of this information is excepted from disclosure under section 552.103. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have established that a former district employee has filed a lawsuit in federal district court claiming that the district unfairly disciplined her. Thus, the district may withhold information relating to this pending litigation from disclosure pursuant to section 552.103.³

As for the remainder of the information relating to administrative actions involving district employees, you claim that this information is excepted from disclosure under sections 552.101 and 552.102. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The court considered intimate and embarrassing information such as that 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. Having reviewed the representative

³We note that if the opposing parties in the pending litigation have seen or had access to any of the information at issue, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Of course, the city has discretion to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

sample of information relating to administrative actions, we find that it is not highly intimate and embarrassing and therefore does not meet the first prong of the *Industrial Foundation* test. This information is not excepted from disclosure under sections 552.101 and 552.102 of the Government Code and must be released to 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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101748

Enclosures: Submitted documents

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(w/o enclosures)