



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 22, 1997

Mr. Yuri Calderón  
Assistant General Counsel  
Houston Independent School District  
Hattie Mae White Administration Building  
3830 Richmond Avenue  
Houston, Texas 77027-5838

OR97-0121

Dear Mr. Calderón:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 103074.

The Houston Independent School District (the "HISD") received a request for information concerning any and all records pertaining to a specified individual no longer employed with HISD. However, HISD seeks to withhold some of the requested information based on sections 552.101, 552.102 and 552.117 of the Government Code. You enclose documents under Exhibits B, C, D, and E for our review.

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 other statutes. Section 21.355 of the Education Code provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). You submit information which indicates that the former HISD employee was a teacher.<sup>1</sup> Based on the reasoning set out in Open Records Decision No.

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<sup>1</sup>Exhibit B documents establish the individual as a former HISD teacher. You appear to indicate that HISD possesses this individual's request to withhold certain information as authorized under section 552.024 of the Government Code. Although you do not assert any exceptions to the documents in Exhibit B, to the extent those documents contain social security numbers, addresses, et cetera, that information must be withheld. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987).

643 (1996), we have reviewed the documents and marked those confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and we conclude that you must withhold those documents.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. Therefore, we will first address whether section 552.101 applies to the documents contained in Exhibit D.

As previously noted, section 552.101 excepts information that is confidential under constitutional or common-law privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

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), (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). We have reviewed the documents submitted for our consideration and have marked the information that must be withheld under constitutional or common-law privacy.

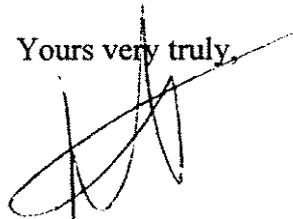
Although we note that medical records created by an individual "under the supervision" of a physician are also confidential under article 4495b there is no information to indicate that this provision applies in the instant case. See Open Records Decision No. 324 (1982) at 2.

You next claim that section 552.101 excepts from disclosure criminal history report information ("CHRI"). We note that generally, such information or even the fact that there is no adverse criminal history report information is confidential and not subject to disclosure.

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. See 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Additionally, section 411.097 of the Government Code provides that any CHRI maintained by a school district is confidential. Gov't Code § 411.097(c). Therefore, whether you have a reported CHRI or a no reported CHRI about the specified individual in your possession and it falls within the ambit of these state and federal regulations, you must withhold the CHRI from the requestor. Documents under Exhibit E which evidence the particular individual's permission to run a CHRI inquiry do not come under the exception and should be released.<sup>2</sup>

We are resolving this matter with this 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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 103074

Enclosures: Marked documents

cc: Ms. Jan Kent  
P.O. Box 220  
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(w/o enclosures)

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<sup>2</sup>We also note that we are in agreement with your redaction of the social security number for reasons previously outlined in the instant case.