



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 11, 1997

Ms. Carolyn C. Rice
Officer for Public Information
Cranfills Gap Independent School District
P.O. Box 67
Cranfills Gap, Texas 76637

OR97-0787

Dear Ms. Rice:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106002.

The Cranfills Gap Independent School District (the "district") received a request for the "letter of dissatisfaction against Murray Wise - Superintendent; letter of dissatisfaction against Debi Spiller - teacher; letter of dissatisfaction against Charla Rudd - teacher." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. You also claim that the requested document contains the name of a student. We assume you intend to claim that the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g and section 552.114 of the Government Code except the student's name from disclosure. We have considered the exceptions you claim and reviewed the submitted information.

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 552.026 of the Government Code incorporates the requirements of FERPA into the Open Records Act. Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g(b)(1). “Education records” are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) at 14-15; 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision Nos. 332 (1982), 206 (1978). We agree that the information you have deleted from the letter must be withheld under FERPA.¹

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). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* Here, we do not believe that the enclosed document “evaluates” the performance of a teacher but is a letter of reprimand about a single incident. Therefore, the district may not withhold the requested information under section 21.355 of the Education Code.

Section 552.101 also encompasses both common-law and constitutional privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information

¹We note that Open Records Decision No. 634 (1995) provides that: (1) the plain language of section 552.301(a) excludes the FERPA provision from the requirement that a governmental body request an attorney general decision, (2) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by section 552.101 as “information considered to be confidential by law,” without the necessity of requesting an attorney general decision as to that exception, and (3) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a “student record,” insofar as the “student record” is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. However, as FERPA was not raised and this office will raise section 552.101 for a governmental body, we addressed whether student records are at issue here. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). 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 683.²

The requested information primarily contains information about the employees' conduct at work -- information that is not private and that is of a legitimate public interest. You may not withhold this information under a common-law right of privacy. See Open Records Decision Nos. 470 (1987), 455 (1987), 278 (1981).

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/glg

Ref.: ID# 106002

Enclosure: Submitted document

cc: Ms. Sue Lee
P.O. Box 44
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(w/o enclosure)

²We note that constitutional privacy is narrower in scope than common-law privacy and need not address it separately in this ruling.

