



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 16, 1997

Mr. Pat Peterson
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR97-0855

Dear Mr. Peterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105292.

The Round Rock Independent School District (the "district") received a request for three categories of documents concerning the monitoring of the Live Oak Elementary School principal. You state that you have released some of the requested information. You claim, however, that two documents are excepted from required public disclosure by sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

You argue that the documents at issue are evaluations made confidential by the Education Code. 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. In the last legislative session, Senate Bill 1 was passed, which added section 21.355 to the Education Code. Section 21.355 provides that, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office has 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 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 their evaluation. *Id.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the memorandum dated April 18, 1996 is confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold this document. We do not believe that the "Professional Development Plan" is a protected evaluation under the statute at this time. We will, therefore, consider your additional argument against disclosure.

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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public under section 552.102 when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. After reviewing the submitted professional development plan, we do not believe that it is protected by a right of privacy. Open Records Decision Nos. 473 (1987), 464 (1987). You may not withhold the plan under section 552.102.

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 questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/glg

Ref: ID# 105292

Enclosures: Submitted documents

cc: Ms. Ginger Deegear
12804 Woodmere
Austin, Texas 78729
(w/o enclosures)