



Office of the Attorney General

State of Texas

August 11, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Pat Peterson
Executive Director
Legal and Administrative Services
Round Rock Independent School District
1311 Round Rock Avenue
Round Rock, Texas 78681

OR97-1786

Dear Ms. Peterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 107875.

The Round Rock Independent School District (the "school district") received a request for a copy of a demand notice, Coach Lepley's personnel file, the personnel files of coaches employed by the school district, and "a detailed list of all of the black coaches employed by Round Rock High School since Coach Perez and Dr. Russell have been employed at Round Rock." You state that the requested demand notice does not exist and that Coach Lepley's personnel file has been made available to the requestor, Coach Lepley's representative.¹ You have submitted a sample personnel file to this office for review and have asked us to determine whether it is appropriate for the school district to release information contained in the requested personnel files.²

Having reviewed the submitted personnel file, we find that some of the information contained therein is excepted from required public disclosure. The personnel file contains a teacher's college transcripts. Section 552.102(b) of the Government Code excepts from disclosure a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, with the exception of the degree obtained and the curriculum. Therefore, prior to releasing the transcripts, the school district must redact from the transcripts all information other than the employee's name, the degree obtained, and the courses taken. Open Records Decision No. 526 (1989) at 2-3.

¹You have not indicated that the school district has released the "detailed list of all black coaches" to the requestor. We assume that, to the extent such information exists, the school district will make it 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.

The file also contains personal financial information that is excepted from disclosure under sections 552.101 and 552.102(a) of the Government Code in conjunction with the common-law right to privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102(a) 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.).

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 Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (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. This office has previously determined that financial information of a purely personal nature, such as information relating to mortgage loans and bank accounts, is protected by common law privacy and must not be released. Open Records Decision No. 600 (1992) at 11-12. We have marked the purely personal financial information contained in the submitted file. The school district must withhold this type of information from disclosure.

The submitted file also contains information that is excepted from disclosure under section 552.101 in conjunction with confidentiality 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). 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.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the documents we have marked are confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the school district must withhold these documents from disclosure.

Section 5.08(b) of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

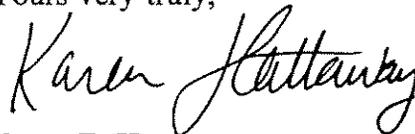
We have marked a document in the personnel file that is a medical record created by a physician. Documents of this type may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). See V.T.C.S. art. 4495b, §§ 5.08(c), (j).

We note also that the personnel file contains an Employment Eligibility Verification, Form I-9. The disclosure of I-9 forms is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). I-9 forms are excepted from disclosure under section 552.101 of the Government Code as information made confidential by law and may be released only in compliance with the federal laws and regulations governing employment verification system.

Finally, section 552.117 of the Government Code may protect some of the information in the requested personnel files from disclosure. Section 552.117 of the Government Code excepts from disclosure the home addresses, home telephone numbers, social security numbers,³ and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Section 552.117 also protects *former* home addresses and telephone numbers from disclosure. *See* Open Records Decision No. 622 (1994). The school district may not, however, withhold this information for a current or former official or employee who made a request for confidentiality under section 552.024 after the request for this information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. The school district must determine which employees made a timely request for confidentiality and withhold the appropriate information on behalf of those employees.

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# 107875

³Additionally, we note that a social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Thus, if any of the social security numbers contained in the requested personnel files were obtained by the district pursuant to any provision of law enacted on or after October 1, 1990, the district must withhold these social security numbers from disclosure under section 552.101 as information made confidential by law.

Enclosures: Marked documents

cc: Mr. Randy Lepley, P.C.
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(w/o enclosures)