



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 18, 1998

Mr. James R. Raup
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR98-0461

Dear Mr. Raup:

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# 112003.

The Round Rock Independent School District (the "school district"), which you represent, received a request for "copies of all background information in the school district's possession that pertains to Mr. David Moore, principal, Live Oak Elementary." In response to the request, you submitted to this office for review a representative sample of the information which you assert is responsive.¹ You claim that the submitted information is excepted from disclosure under 552.101, in conjunction with section 21.355 of the Education Code. We have considered the exception 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 both common-law and constitutional privacy, as well as information protected by other statutes. Section 21.355 of the Education Code 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). Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that a portion of the submitted records, which we have marked, constitute documents that evaluate the performance of a teacher or administrator, and therefore, must be withheld from disclosure. However, the school district may not withhold the remaining information from public disclosure based on section 552.101 in conjunction with section 21.355 of the Education Code.

¹We 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.

Finally, we note that in your original brief to this office, you asked whether the "grievant's name" may be withheld. Section 552.101 of the Government Code also applies to information made confidential by the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.* However, individual determinations are required. *See* Open Records Decision No. 370 (1983). We find that the "grievant's name" is not protected from disclosure under the common-law right to privacy and must be released.²

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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 112003

Enclosures: Marked documents

cc: Ms. Sharon Keegan
13506 Caldwell Drive
Austin, Texas 78750
(w/o enclosures)

²Furthermore, we also note that the informer's privilege, if claimed, is not applicable in this instance, as the complaints appear to be of an administrative nature rather than of criminal conduct.