

January 11, 1999

Ms. Bertha Bailey Whatley
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Fort Worth Independent School District
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OR99-0078



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Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120920.

The Fort Worth Independent School District (the "district") received a request for information related to the termination of a district employee. You contend that a portion of the responsive documents is excepted from public disclosure by Government Code sections 552.101 (in conjunction with rights of privacy), 552.108 and 552.111. You have supplied a representative sample of the information you seek to withhold. We have considered the exception you claim and have reviewed the documents at issue.

You argue that release of portions of the responsive information would encroach on the privacy rights of some individuals. You assert that complaints against employees are of no legitimate interest to the public, that release of this information would constitute an unwarranted invasion of privacy, and that to release them would subject the employee to "false light" defamation. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception extends to information protected by constitutional or common law privacy rights. Information is excepted from the disclosure requirements of the Government Code on grounds of privacy only if: 1) the information 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. *Industrial Found. v. Texas Indus. Accident Bd*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information such as that 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; *see also*, Open Records Decision Nos. 470 (1987)

(concluding that fact that person broke out in hives as a result of severe emotional distress is excepted by common-law privacy), 455 (1987) (concluding that kinds of prescription drugs person is taking are protected by common-law privacy), 422 (1984) (concluding that details of self-inflicted injuries are presumed protected by common-law privacy) 343 (1982) (concluding that information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress is protected by common-law privacy). The doctrine of "false light" privacy has been rejected by the Texas Supreme Court. *Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994). Thus, an argument based on "false light" defamation is not grounds for excepting information from the public disclosure requirements of the Open Records Act. Our review of the submitted information revealed several allusions to allegations of sexual assault on children. We note that the identities of the assault victims were not included in this information. We are of the opinion that reports of these alleged actions are matters of legitimate public concern. Thus, they are not excepted from disclosure by a right of privacy. We also note that reports of abuse or neglect of a child are made confidential by Family Code section 261.201. However, we find that the subject information merely alludes to and is not part of such a report. We conclude that none of the information submitted may be withheld pursuant to section 552.101 of the Government Code in conjunction with rights of privacy.

You also contend that the documents submitted are excepted from disclosure because they "deal with the detection, investigation, or prosecution of crime," apparently raising section 552.108 of the Government Code, which reads in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime.

You indicate that some information has been forwarded to the appropriate law enforcement agency and that this information relates to investigations that are active. Although your argument is global, clearly, much of the submitted information is not of the type that would be part of an investigation into a criminal matter. Pursuant to section 552.108 of the Government Code, the district may withhold those documents which 1) relate to criminal activity and 2) have been or will be forwarded to a law enforcement agency.

Finally, you argue that the responsive documents are excepted from public disclosure by section 552.103 of the Government Code. To secure the protection of

section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). You contend that an "administrative hearing" is pending; we note that a "post-termination" hearing has been requested. The requested information clearly relates to such a hearing. Our office has previously held that a contested case under the Administrative Procedure Act, Government Code chapter 2001, constitutes "litigation" for purpose of the Open Records Act. Open Records Decision No. 588 at 7 (1991). However, you have not indicated what, if any, hearing subject to the Administrative Procedures Act will be conducted. We conclude that you have not shown that litigation is reasonably anticipated in this matter. Therefore no responsive information may be withheld pursuant to Government Code section 552.103.

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,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 120920

Enclosures: Submitted documents

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(w/o enclosures)