

January 13, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

OR99-0095

Mr. John S. Aldridge  
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— \* —

Dear Mr. Aldridge

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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# 121023.

The Bosqueville Independent School District (the "district"), which you represent, received two open records requests for the written settlement between the district and the district's superintendent regarding the superintendent's employment. You state that the district does not object to the release of the settlement document except for an attachment to the document designated as "Exhibit A," which you characterize as the superintendent's performance evaluation. You contend that the attachment must be withheld from the public pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of 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. 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). 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 his or her evaluation. *Id.*

After reviewing the document at issue, we first note that Exhibit A is in the form of a letter of recommendation, with an accompanying list of "achievements and

accomplishments,” rather than a true performance evaluation. Additionally, the settlement document indicates that in the future the district intends to release information from this document, if not the document itself, to prospective employers of the superintendent in response to “requests for references, recommendation or other information.” Based on the above, we conclude that Exhibit A is not an evaluation that is protected under section 21.355 of the Education Code. Consequently, the district may not withhold Exhibit A from the public pursuant to section 21.355.

You also contend that the contents of Exhibit A are protected from required public disclosure pursuant to common-law privacy as incorporated into section 552.102(a) of the Government Code. The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person’s *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.-Austin 1983, writ ref’d n.r.e.). Section 552.102(a) may be invoked only when information reveals “intimate details of a highly personal nature.” Open Records Decision Nos. 315 (1982), 224 (1979), 169 (1977). None of the information in Exhibit A comports with this standard. This document pertains solely to the actions of a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102(a) does not protect the type of information at issue here.

You also contend that the release of Exhibit A would violate the superintendent’s liberty interests under the Fourteenth Amendment of the United States Constitution. We note, however, that

[t]o establish a liberty interest, an employee must demonstrate that his governmental employer has brought *false charges* against him that ‘might seriously damage his standing and associations in his community,’ or that impose a ‘stigma or other disability’ that forecloses ‘freedom to take advantage of other employment opportunities.’ *Board of Regents v. Roth*, 408 U.S. 564 (1972).

*Wells v. Hico Indep. Sch. Dist.*, 736 F.2d 243, 256 (5th Cir. 1984) (emphasis added; parallel citations deleted). It is not apparent to us how any of the information at issue, in and of itself, constitutes a “false charge.” Consequently, the release of this information would not implicate the superintendent’s Fourteenth Amendment

interests. Furthermore, even if it did, we are aware of no authority for the proposition that such information must be withheld from the public under section 552.102(a) on this basis.

Because you have raised no applicable exception to disclosure, we conclude that the district must release Exhibit A in its entirety. 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,

  
Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/RWP/ch

Ref: ID# 121023

Enclosures: Submitted documents

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