



February 22, 1999

Mr. Juan Cruz
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR99-0514

Dear Mr. Cruz:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 122367.

The San Antonio Independent School District (the "school district"), which you represent, received a request for Mr. Abel Candia's personnel file, documents relating to his decision in a particular Level I grievance hearing, and policies "concerning copyright requirements or other requirements relating to copying material for instructional use." You state that the school district will comply with the request for policies concerning copyright issues. You contend that some of the other requested documents are excepted from disclosure pursuant to sections 552.101, 552.102, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

First, you contend that documents relating to Mr. Candia's decision in the Level I grievance hearing (exhibit B) are excepted from disclosure pursuant to section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Garland v. Dallas Morning News*, 969 S.W.2d 548, 557 (Tex. App.--Dallas 1998, pet. requested) (citing *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455, 457 (Tex. App.--Houston [14th Dist.] 1996), writ denied per

curiam, 41 Tex. Sup. Ct. J. 575 (1998) (documents relating to problems with specific employee do not relate to the making of new policy but merely implement existing policy)). ORD 615 at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. ORD 615 at 4-5. Having reviewed the documents in exhibit B, we find that they relate to routine administrative matters, not the policymaking function of the school district. Therefore, the school district may not withhold the documents in exhibit B from disclosure pursuant to section 552.111.

Next, you contend that exhibit C, Mr. Candia's performance appraisals, are excepted from disclosure 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 provides, "A 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). This office has 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.* Similarly, 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.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the documents in exhibit C 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.

You contend that exhibit D, Mr. Candia's college transcripts, are excepted from disclosure pursuant to section 552.102 of the Government Code. 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 at 2-3 (1989).

Exhibit E is an employee health evaluation. You contend that exhibit E is excepted from disclosure pursuant to section 552.101. We believe that exhibit E is protected from disclosure pursuant to the provisions of Title I of the Americans with Disabilities Act of 1990 (the "ADA"), 42 U.S.C. §§ 12101 *et seq.* The ADA provides that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. In addition, information obtained in the course of a "fitness for

duty examination,” conducted to determine whether an employee is still able to perform the essential functions of his job, is to be treated as a confidential medical record. 29 C.F.R. § 1630.14(c).

Finally, you contend that exhibit F, Mr. Candia’s designation of beneficiary, is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. 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 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 held that information is protected 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 held that information revealing an employee’s designation of beneficiaries of insurance and retirement funds meets the test for common-law privacy. Open Records Decision No. 600 at 10-11 (1992). Thus, the school district must withhold exhibit F from disclosure under section 552.101.

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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 122367

Enclosures: Submitted documents

cc: Mr. Tony Conners
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(w/o enclosures)