



March 22, 1999

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

OR99-0788

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# 123050.

The Round Rock Independent School District (the "district"), which you represent, received a request for information concerning a specific investigation. You state that some of the requested information has been released. You claim, however, that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the submitted documents contain information that must be withheld pursuant to sections 552.026 and 552.114 of the Government Code, and pursuant to the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. In Open Records Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." It appears that, pursuant to FERPA, the district has redacted certain information from the submitted records. We agree that such information must be withheld pursuant to sections 552.026 and 552.114. We have marked additional information that must also be withheld under FERPA.

You first assert that documents submitted as Exhibits A1, A2, and C are protected from disclosure under section 552.101.¹ Section 552.101 applies to information when its disclosure would constitute the common-law tort of invasion of privacy through the disclosure of private facts. To be within this common-law tort, 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.).

The information at issue pertains to the actions of the district's employees while acting as public servants and the conditions for their continued employment, 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). Consequently, the district may not withhold any of the information at issue pursuant to common-law privacy.

Section 552.101 also excepts from disclosure information protected by constitutional privacy. The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional "zones of privacy" described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976) and are clearly inapplicable here.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual's privacy interests against the public's need to know information of public concern. Although such a test might appear more protective of privacy interests than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). As noted above, the information you seek to withhold does not concern intimate aspects of an individual's private affairs, but rather directly pertains to the job performance of district employees. Therefore, the district may not withhold any of the requested information under constitutional privacy. *See generally* Open Records Decision No. 423 (1984) (concluding that scope of employee privacy is narrow).

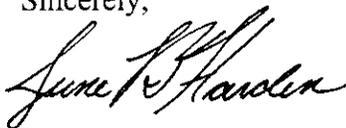
¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

You also argue that the documents submitted as Exhibit B are confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 21.355 of the Education Code provides, "Any 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). After reviewing the documents at issue, we conclude that the documents submitted as Exhibit B may not be withheld under section 21.355 of the Education Code.

We note, however, that the submitted documents contain information that may be protected from disclosure under section 552.117. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of current or former government employees, officials and peace officers, as well as information revealing whether those employees, officials, or officers have family members. Section 552.117 requires you to withhold this information if a current or former employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for 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 at 5 (1989)

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.

Sincerely,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 123050

Enclosures: Marked documents

cc: Ms. Maria Contreras
12117 Old State Trail
Austin, Texas 78750
(w/o enclosures)