



August 20, 1999

Mr. Raymond L. Gregory  
Bracewell and Patterson, L.L.P.  
South Tower Pennzoil Place  
711 Louisiana Street  
Suite 2900  
Houston, Texas 77002-2781

OR99-2365

Dear Mr. Gregory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 128368.

The Athens Independent School District (the "district"), which you represent, received a request for "all letters and/or reports submitted to the Commissioner of Education concerning a recent audit at Athens High School." You claim that the records are excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. Therefore, we will first address whether section 552.101 applies to the information.

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 552.101 also encompasses common-law privacy and excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

After a review of the requested information, we conclude that the requested information is not excepted from public disclosure by privacy. The information relates to actions of public employees and matters of public business and as such is of legitimate public interest. *See, e.g.*, Open Records Decision No. 444 at 4 (1986) (legitimate public interest in reasons for public employee’s demotion, dismissal, or resignation). Thus, you must release the requested information.

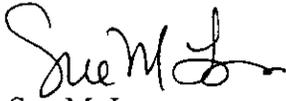
However, section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members when the public employee requests that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the specified information of a current or former employee or official who 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 the 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). If the employee has elected to not allow public access to this information in accordance with the procedures of section 552.024 of the Government Code, we believe that the district must withhold this information from required public disclosure pursuant to section 552.117.

Furthermore, federal law may prohibit disclosure of this employee’s social security number. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We are unable to determine whether the social security number is confidential under this federal statute. We note, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information.

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,



Sue M. Lee  
Assistant Attorney General  
Open Records Division

SML\nc

Ref: ID# 127368

encl: Submitted documents

cc: Ms. Toni Garrard Clay  
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(w/o enclosures)