



August 20, 2002

Ms. Angelica E. Rodriguez-Barrera
McKinney & Rodriguez-Barrera
P.O. Box 2747
Corpus Christi, Texas 78403-2747

OR2002-4592

Dear Ms. Rodriguez-Barrera:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167306.

The Robstown Independent School District (the "district"), which you represent, received a request for personnel records relating to two named individuals. The district claims that information relating to one of these individuals is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.¹ We have considered the exceptions you raise and have reviewed the information you submitted. We assume that the district has released the rest of the requested information. If not, then the district must do so at this time. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000).*

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 encompasses information that another statute makes confidential. Section 21.355 of the Education Code provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See Open Records Decision No. 643 (1996).* In that decision, we determined that the word "teacher," for purposes of section 21.355, is a person who is required to and does in fact hold a teaching certificate

¹Former section 3(a)(2) of the Open Records Act, which the district also raises, was the statutory predecessor to section 552.102(a) of the Government Code. The Seventy-third Legislature enacted chapter 552 of the Government Code and repealed the Open Records Act in 1993. The legislation was a non-substantive codification of existing law. *See Act of May 4, 1993, 73rd Leg., R.S., ch. 268, §§ 1, 46, 47, 1993 Tex. Gen. Laws 583, 594-607, 986.*

under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* Open Records Decision No. 643 at 4. We also concluded that the word "administrator" in section 21.355 means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

The district asserts that the submitted information includes evaluations of a teacher or an administrator that are confidential under section 21.355. The district indicates that the individual who is the subject of the evaluations held the appropriate teacher's or administrator's certificate or permit at the time of each evaluation. Based on the district's representations and our review of the submitted information, we have marked the documents that are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

The district also raises section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" This exception is applicable to personnel information that relates to an official or employee of a governmental body. The test of privacy under section 552.102(a) is the same as the test under section 552.101 in conjunction with *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy under *Industrial Foundation* protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See* 540 S.W.2d at 685. Because of the greater legitimate public interest in information that relates to public officials and employees, privacy under section 552.102(a) is confined to information that reveals "intimate details of a highly personal nature." *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Thus, privacy under section 552.102(a) is "very narrow." *See* Open Records Decision No. 400 at 5 (1983); *see also* Open Records Decision Nos. 470 at 4 (1987) (public employee's job performance does not generally constitute that individual's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 423 at 2 (1984) (statutory predecessor applicable when information would reveal intimate details of a highly personal nature), 400 at 5 (1983) (statutory predecessor protected information only if its release would lead to clearly unwarranted invasion of privacy). The district has not demonstrated that any of the submitted information is excepted from disclosure under section 552.102(a) of the Government Code.

We note, however, that this information includes college transcripts. Section 552.102(b) excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Section 552.102(b) further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the submitted college transcripts under section 552.102(b).

We also note that section 552.117 of the Government Code is applicable to some of the submitted information. Section 552.117(1) excepts from disclosure the home address, home telephone number, and social security number of a current or former official or employee of a governmental body, as well as information that reveals whether the person has family members, if the current or former official or employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 at 5-6 (1994), 455 at 2-3 (1987). This information may not be withheld, however, if the current or former employee made the request for confidentiality under section 552.024 after the 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. *See* Open Records Decision No. 530 at 5 (1989). In this instance, the submitted information reflects that the employee to whom the information pertains made a timely request for confidentiality under section 552.024. Accordingly, we have marked the information that the district must withhold under section 552.117(1).

In summary, some of the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district also must withhold the college transcripts, except for the information that reveals the degree obtained and the courses taken, under section 552.102(b). The district must withhold the employee’s home address and telephone number, social security number, and information that reveals whether the employee has family members under section 552.117. The district must release the rest of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 167306

Enc: Marked documents

c: Mr. David C. Bedard
412 East Fourth Street
Bishop, Texas 78343-2210
(w/o enclosures)