



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 15, 2003

Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
5219 McPherson, Suite 306
Laredo, Texas 78041

OR2003-2544

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# 179511.

The United Independent School District (the "district"), which you represent, received a request for a copy of a letter from Jorge Dominguez addressed to the Superintendent of Schools for the district. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the case of *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied). 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 under the doctrine of common-law privacy. For information to be protected by common-law privacy it must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The *Industrial Foundation* court stated that information is excepted 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. The type of information considered intimate and embarrassing by the Texas Supreme Court

¹Although you do not specifically cite to Government Code section 552.135, you make an argument sufficient to invoke that section.

in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. Here, however, the submitted information does not relate to an allegation of sexual harassment. *Ellen* therefore does not apply to the information at issue. Furthermore, we conclude that none of the submitted information is subject to common-law privacy because the public has a legitimate interest in the information. See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 438 (1986) (work behavior of a public employee and the conditions for the employee's continued employment are matters of legitimate public interest not protected by the common-law right of privacy), 423 at 2 (1984) (explaining that because of the greater legitimate public interest in the disclosure of information regarding public employees, employee privacy is confined to information that reveals "intimate details of a highly personal nature"). Consequently, the district may not withhold the submitted information under section 552.101 of the Government Code.

We now address your argument that the submitted information is excepted from disclosure under section 552.135 of the Government Code. Section 552.135 provides in pertinent part as follows:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from the requirements of Section 552.021.
- (c) Subsection (b) does not apply:
 - (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
 - (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
 - (3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135. This “informer’s privilege” is like the informer’s privilege aspect of section 552.101 of the Government Code, except that this exception for school district informers may apply in situations in which noncriminal activity is reported. Because the protection of section 552.135 is limited to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov’t Code § 552.301(e)(1)(A). You state that the conduct reported relates to a possible violation of the Teacher Code of Ethics, which is incorporated into the Texas Administrative Code. However, you do not clearly identify the specific law alleged to have been violated. We therefore conclude that district may not withhold the submitted information under section 552.135 of the Government Code. Because you have raised no other exceptions to disclosure, we find that the district must release the submitted 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 Dep’t of Pub. 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 179511

Enc. Submitted documents

c: Phillip W. Dyer
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(w/o enclosures)