



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 15, 2003

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 S. Greenville Avenue
Richardson, Texas 75081-4198

OR2003-4902

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184242.

The Richardson Independent School District (the "district") received a request for eleven categories of information regarding certain policies of the district and a named individual.¹ You state that you have released most of the requested information to the requestor. However, you claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.117 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or

¹We note that the Public Information Act does not require the department to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986).

²Although you raise section 552.107 of the Government Code, you have failed to submit any comments stating the reasons why section 552.107 is applicable to the submitted information. Therefore, we find that the district has waived section 552.107. See Gov't Code §§ 552.301, .302; Open Records Decision No. 663 at 5 (1999).

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

administrator is confidential.” This office 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). In that opinion, this office 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.* You state that the principal in question is a certified educator. You also state that portions of the submitted information consist of documents evaluating the performance of this principal. We have reviewed the submitted information and find that some of it evaluates the “performance of a teacher or administrator.” Therefore, we conclude that the information we have marked is confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code.

Section 552.102(a) of the Government Code protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The test for determining whether information is excepted under section 552.102 is the same as the one used to decide whether it is protected by the common-law right to privacy under section 552.101.⁴ *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.).

For information to be protected from public disclosure under common-law privacy, the information 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). Information must 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). The type of information considered intimate and embarrassing by the Texas Supreme Court 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. Upon review of the remaining submitted information, we conclude that it consists solely of information regarding the employment of the individual in question and, thus, is of legitimate concern to the public. See Open Records Decision Nos. 470 (1987) (public employee’s job performance does not generally constitute his private affairs), 455 (1987)

⁴Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy.

(public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); *see also* Open Records Decision No. 455 (1987) (absent special circumstances, home addresses and telephone numbers of private citizens generally not protected under privacy exceptions of Public Information Act). Therefore, the remaining submitted information is not confidential under common-law privacy and may not be withheld under section 552.102(a) of the Government Code.

You also assert section 552.102(b) of the Government Code. Section 552.102(b) states:

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Gov't Code § 552.102(b). After reviewing the submitted information, we conclude that you must withhold the additional information we have marked pursuant to section 552.102(b) of the Government Code, except for the information concerning the employee's curriculum and degree obtained.

Finally, you claim that some of the highlighted information is excepted from disclosure pursuant to section 552.117(1) of the Government Code. Section 552.117(1) excepts from disclosure the *home* address and telephone number, social security number, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. 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). You have submitted the employee's timely executed section 552.024 election form. Therefore, you must withhold most of the section 552.117(1) information you have highlighted, as well as the additional information we have marked.⁵ However, we have marked the information that is not subject to section 552.117(1) and must be released.

⁵As we are able to make this determination, we need not address your remaining arguments regarding the employee's social security number.

In summary, we conclude that: 1) you must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; 2) you must withhold the additional information we have marked pursuant to section 552.102(b) of the Government Code; and 3) you must withhold the employee's *home* address and telephone number, social security number, and family member information under section 552.117(1) of the Government Code. All remaining information must be released.

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

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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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 184242

Enc: Submitted documents

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(w/o enclosures)