



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2003

Mr. Leslie Vann
Superintendent
Gorman I.S.D.
P.O. Box 8
Gorman, Texas 76454

OR2003-5561

Dear Mr. Vann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185676.

The Gorman Independent School District (the "district") received a request for (1) district itemized credit card bills from March 20 through April 20, 2003, (2) district check payments from April 15 through May 15, 2003, with the exclusion of those to a specified payee, (3) personal and sick leave records for two named individuals from August 2002 through May 2003, and (4) a named individual's "Ag Travel report" for February, March, and April 2003. You state that you have released some of the requested information. However, you claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information

Section 552.102 of the Government Code 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), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Government Code. Therefore, we will address your claim of section 552.102 by addressing the applicability of 552.101 to the information at issue.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common law right to privacy. *Industrial Found.*, 540 S.W.2d 668. Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and it is of no legitimate concern to the public. *Id.* at 683-85. 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. 540 S.W.2d at 683. However, common-law privacy does not apply to embarrassing or intimate information “unless the records [at issue] are also of no legitimate interest to the public.” Open Records Decision No. 470 at 4 (1987); *see also* Open Records Decision No. 464 (1987). The public has a genuine interest in information concerning a public employee’s job performance and the reasons for dismissal, demotion, or promotion. Open Records Decision No. 444 at 5-6 (1986); *see also* Open Records Decision No. 208 (1978) (disciplinary action against public employee available to public). Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests. The first interest is an individual’s interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the “zones of privacy,” as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976).¹ The second individual privacy interest involves matters that are outside the zones of privacy but that implicate an “individual’s interest in non-disclosure or confidentiality.” Open Records Decision No. 455 at 4 (1987) (quoting *Fadjo v. Coon*, 633 F.2d 1172, 1175 (5th Cir. 1981)). To determine whether a given situation triggers the constitutional right to privacy, this office applies a balancing test, weighing the individual’s interest in privacy against the public right to know the information. *See* Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

In this instance, we conclude upon reviewing the submitted information that it is not the type of information considered highly intimate or embarrassing for purposes of common-law privacy. We further conclude that the submitted information does not fall within the zones of privacy contemplated by constitutional privacy nor does it implicate an individual’s interest in non-disclosure. Therefore, the submitted information may not be withheld under sections 552.101 or 552.102.

However, we note that portions of the submitted information may be confidential under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request

¹ The “zones of privacy” implicated in the individual’s interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education.

that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. To the extent that the current or former employee or official at issue timely elected to keep the individual's personal information confidential, the district must withhold the information we have marked under section 552.117. The school district may not withhold this information under section 552.117 if the current or former employee or official did not make a timely election to keep the information confidential. The remaining information must be released to the requestor.

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).

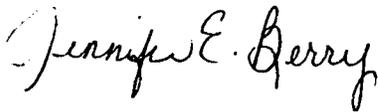
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 185676

Enc: Submitted documents

c: Mr. Gene Smith
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(w/o enclosures)