



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2007

Ms. Ann Forbes
Paralegal
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2007-05855

Dear Ms. Forbes:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 278487.

The Fort Worth Independent School District (the "district") received a request for all information regarding a named person and a specific incident. You state that you will release some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that some of the submitted information does not pertain to the named person or the specified incident, and thus, is not responsive to the instant request. Information that is not responsive to this request, which we have marked, need not be released. Moreover, we do not address such information in this ruling.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information protected by other statutes. You claim that the information at issue is excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted this section to apply to any document that

evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* 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. *See id.* We note, however, that section 21.352(c) specifically provides that “[e]ach teacher is entitled to receive a written copy of the evaluation on its completion.”

You claim that Enclosure 3 consists of evaluations of the named person’s performance as a teacher, holding a certificate or permit required under chapter 21, and teaching at the time of his evaluations. Here, the requestor represents the named person in question. Therefore, to the extent the evaluations are the type contemplated in section 21.352, the requestor has a right of access to her client’s evaluations under section 21.352(c). However, if the requestor does not have a right of access under section 21.352(c), then Enclosure 3 is excepted from disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code.

You claim that Enclosure 2 contains information that is excepted from public disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. The common-law right of privacy protects information that is 1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and 2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public’s interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that “the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.” *Id.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would identify the victims and witnesses. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. Common-law privacy does not

protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

In this instance, Enclosure 2 includes an adequate summary of the sexual harassment investigation, which we have marked. In accordance with the holding in *Ellen*, the district must release the summary, redacting information that identifies the alleged victim and witnesses, which you have marked. The district must withhold the remaining information in Enclosure 2 from disclosure under section 552.101 in conjunction with common law privacy under *Ellen*.

In summary, to the extent the evaluations in Enclosure 3 are the type contemplated in section 21.352, the requestor has a right of access to her client's evaluations under section 21.352(c) of the Education Code. However, if the requestor does not have a right of access under section 21.352(c), then Enclosure 3 is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. With the exception of the information you have marked under section 552.101 in conjunction with common-law privacy and *Ellen*, the district must release the summary in Enclosure 2. The district must withhold the remaining information in Enclosure 2 from disclosure under section 552.101 in conjunction with common-law privacy and *Ellen*.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline,

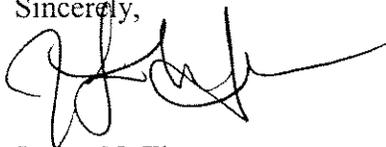
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Office of the Attorney General 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. 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,



Jaclyn N. Thompson
Assistant Attorney General
Open Records Division

JNT/ma

Ref: ID# 278487

Enc. Submitted documents

c: Ms. Bobbie Edmonds
Attorney at Law
209 South Jennings Avenue
Fort Worth, Texas 76104
(w/o enclosures)