



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 6, 2009

Ms. Mari M. McGowan  
Abernathy, Roeder, Boyd & Joplin P.C.  
Attorney for Greenville Independent School District  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2009-06065

Dear Ms. McGowan:

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# 342173.

The Greenville Independent School District (the "district"), which you represent, received a request for information relating to any complaints or disciplinary action against a named former employee. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you have notified the named former employee of the request. A representative of the named former employee has responded and claims the submitted information is excepted under sections 552.101, 552.102, and 552.110. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

We note that the representative of the named former employee seeks to withhold a document he submitted as Appendix 1. This document was not submitted by the district. Because such information was not submitted by the governmental body, this ruling does not address that information and is limited to the information submitted as responsive by the district. *See* Gov't Code § 552.301(e)(1)(D).

Section 552.101 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 that other statutes make confidential. You assert that the submitted information is excepted from disclosure under section 552.101 in conjunction with section 21.355 of the Education Code, which 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). We have determined 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 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.*

Both the district and the former employee’s representative claim that the information at issue is administrator evaluations that are confidential under section 21.355 of the Education Code. The submitted information consists of a letter placing the named employee on administrative leave, a payoff calculation worksheet, a resignation letter, and a settlement agreement and release between the former employee and the district. Upon review, these documents do not constitute evaluations of the employee’s performance as an administrator. Thus, the district may not withhold the submitted information under section 552.101 in conjunction with section 21.355 of the Education Code.

Next, the former employee’s representative claims the information is confidential based on the doctrine of common-law privacy. Section 552.101 encompasses the doctrine of common-law privacy, while section 552.102(a) excepts from public 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). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee’s employment and its terms constitutes information relevant to person’s employment relationship and is part of employee’s personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *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.) (addressing statutory predecessor). We will therefore consider the applicability of common-law privacy under section 552.101 together with the claim regarding section 552.102.

In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), the Texas Supreme Court held that information is protected by common-law privacy if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of a legitimate concern to the public. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records

Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). In addition, this office has found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision No. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). The information at issue pertains to the named former employee's employment and work conduct. Additionally, the financial information in the submitted information pertains to a financial transaction between the district and the former employee. Therefore, we conclude that there is a legitimate public interest in this information and it may not be withheld on the basis of common-law privacy.

Next, the former employee's representative claims the submitted information is private under the federal and state constitutions. Section 552.101 also encompasses the doctrine of constitutional privacy. Federal constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. See *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)). Upon review, we find the former employee's representative has failed to demonstrate how any portion of the submitted information falls within the zones of privacy or implicates the former employee's privacy interests for purposes of constitutional privacy. Therefore, the district may not withhold any information under section 552.101 on that basis.

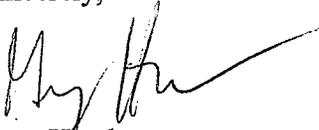
As for the Texas Constitution, we have interpreted that the right of privacy under the Texas Constitution is consistent with that right under the federal Constitution, which we have previously addressed. *City of Sherman v. Henry*, 928 S.W.2d 464, 473 (Tex. 1996) ("While the Texas Constitution has been recognized to possess independent vitality, separate and apart from the guarantees provided by the United States Constitution, there is no reason to expand Texas constitutional protections . . ." (citations omitted)).

Finally, the former employee's representative claims the submitted information is excepted from disclosure under section 552.110(b) of the Government Code. Section 552.110(b) protects "[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]" Gov't Code § 552.110(b). Upon review, we find that the former employee's representative has failed to demonstrate that any of the submitted information consists of commercial or financial information whose disclosure would cause substantial competitive harm. *See id.* § 552.110(b); Open Records Decision No. 661 at 5-6 (1999). Therefore, none of the submitted information may be withheld under section 552.110 of the Government Code. As no further exceptions to disclosure are raised, the submitted information must be released in its entirety.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/rl

Ref: ID# 342173

Enc. Submitted documents

c: Requestor  
(w/o enclosures)