



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 9, 2009

Mr. James A. Erck, P.C.  
Attorney at Law  
1610 East Main Street, Suite 8  
P. O. Drawer 4040  
Alice, Texas 78333

OR2009-14257

Dear Mr. Erck:

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# 357925.

The Alice Independent School District (the "district"), which you represent, received a request for all e-mails and correspondence to the district from the Lubbock Independent School District or a named individual principal regarding a named individual's job performance. You claim that the submitted information is excepted from disclosure under section 552.102 of the Government Code, and confidential under section 21.355 of the Texas Education Code. We have considered your arguments and reviewed the submitted information.

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 section encompasses information protected by other statutes, including 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 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 Open Records Decision No. 643, we determined for purposes of section 21.355, the word "teacher" means a person who is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school

district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4.

You contend that the submitted document constitutes the evaluation of a teacher and should therefore be withheld from disclosure under section 21.355. Upon review, we conclude the submitted document constitutes an evaluation subject to section 21.355 of the Education Code. Thus, if the employee at issue held a teaching certificate and was engaged in the process of teaching at the time of the evaluation, the submitted evaluation is confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code. To the extent this employee did not hold the requisite certificate, or was not engaged in the process of teaching, the submitted evaluation is not confidential under section 21.355, and may not be withheld under section 552.101 of the Government Code. In that event, we address your argument under section 552.102 of the Government Code.

You assert that the submitted evaluation is excepted from disclosure under 552.102 of the Government Code. Section 552.101 of the Government Code also encompasses the common-law right of privacy, while section 552.102(a) of the Government Code 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 your claim regarding section 552.102(a).

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. Generally, however, the public has a legitimate interest in information that relates to public employment and public employees, and information that pertains to an employee's actions as a public servant generally cannot be considered beyond the realm of legitimate public interest. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public

employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find that no portion of the submitted evaluation constitutes highly intimate or embarrassing information of no legitimate concern to the public. Therefore, no portion of the submitted evaluation may be withheld under either section 552.101 or section 552.102 on the basis of common-law privacy.

In summary, if the employee at issue held a teaching certificate and was engaged in the process of teaching at the time of the evaluation, the submitted evaluation must be withheld under section 552.101 of the Government Code. No portion of the submitted evaluation may be withheld under either section 552.101 or section 552.102 on the basis of common-law privacy.

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/eeg

Ref: ID# 357925

Enc. Submitted documents

c: Requestor  
(w/o enclosures)