



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 30, 2015

Mr. Ricardo R. Lopez
Counsel for the South San Antonio Independent School District
Schulman, Lopez & Hoffer, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2015-08348

Dear Mr. Lopez:

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# 561843.

The South San Antonio Independent School District (the "district"), which you represent, received a request for any and all resignation agreements between the district and district employees from a specified time period. You claim the submitted 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 552.101 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. Section 552.101 of the Government Code encompasses section 21.355 of the Education Code. Section 21.355(a) provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). 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 "administrator," for purposes of section 21.355, means a person who is required to and does in fact hold an administrator's certificate under subchapter B of 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.*

You state the submitted information consists of resignation agreements between the district and former district administrators that were executed in order to avoid further disciplinary action against the administrators. Accordingly, you assert these documents evaluate the performance and suitability of the administrators because such an agreement “demonstrates the ultimate comment on that individual administrator’s performance.” However, upon review, we find you have failed to demonstrate how the information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. *See* Educ. Code § 21.355(a). Thus, we conclude the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.102(a) 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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 of the Government Code encompasses common-law privacy, which protects information 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 legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a) and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find no portion of submitted information is subject to section 552.102(a) of the Government Code; thus, the district may not withhold any portion of the submitted information on that basis. As you raise no further exceptions, the district must release the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Lee Seidlits", with a long horizontal flourish extending to the right.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 561843

Enc. Submitted documents

c: Requestor
(w/o enclosures)