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ATTORNEY GENERAL OF TEXAS

June 29, 2015

Mr. James Whitton
For the Eagle Mountain-Saginaw I.S.D.
Brackett & Ellis, P.C.
100 Main Street
Fort Worth, Texas 76102-3090

OR2015-12929

Dear Mr. Whitton:

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# 568976.

The Eagle Mountain-Saginaw Independent School District (the "district"), which you represent, received a request for a specified settlement agreement involving a former employee.¹ Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of the former employee, whom you notified. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the requestor and from an attorney representing the former employee. *See id.* We have considered the submitted comments and reviewed the submitted information.

¹We note the district asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(18). The submitted information is a settlement agreement to which the district is a party. Accordingly, the submitted information is subject to section 552.022(a)(18). The district may only withhold the information subject to subsection 552.022(a)(18) if it is made confidential under the Act or other law. We note the former employee's attorney raises sections 552.103 and 552.108 of the Government Code as exceptions to disclosure. However, sections 552.103 and 552.108 are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Furthermore, we note sections 552.103 and 552.108 protect the interests of governmental bodies, as distinguished from exceptions which are intended to protect the interests of third parties and, in this case, the district does not raise either of these exceptions. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; ORDs 665 at 2 n.5, 663 at 5, 177 at 3. Accordingly, the submitted information may not be withheld under section 552.103 or section 552.108 of the Government Code. However, because section 552.101 of the Government Code makes information confidential for purposes of section 552.022, we will address its applicability to the submitted information.

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. The former employee's attorney asserts 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.*

The former employee's attorney claims the submitted information evaluates his client's performance and is confidential under section 21.355 of the Education Code. The submitted information consists of a settlement agreement between the former employee and the district. Upon review, we find this information does not constitute an evaluation of the former employee's performance as an administrator for purposes of section 21.355. Thus, the district may not withhold the submitted information under section 552.101 in conjunction with section 21.355 of the Education Code.

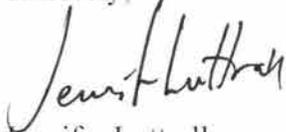
Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Generally, however, the public has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision No. 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). 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).

The former employee's attorney claims the submitted information is subject to common-law privacy. Upon review, we find the former employee's attorney has failed to demonstrate how the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. As no further exceptions have been raised, the submitted information must be released.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 568976

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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