



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 10, 2016

Ms. Lauren Wood
Counsel for Plano Independent School District
Abernathy, Roeder, Boyd, & Hullett, P.c.
P. O. Box 1210
Mckinney, Texas 75070-1210

OR2016-10653

Dear Ms. Wood:

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# 611987.

The Plano Independent School District (the "district"), which you represent, received a request for information pertaining to the investigation of a named employee, including the district's "official policy regarding when district employees are put on administrative leave." The district claims the requested information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by a representative of the named employee. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the district submitted portions of a sexual harassment investigation, but no other documents, including any requested information pertaining to the district's policy regarding administrative leave. We assume, to the extent any additional responsive information existed when the district received the request for information, the district has released it to the requestor. If not, then the district must do so immediately. *See id.* §§ 552.006, .301, .302; Open Records Decision No. 664 (2000).

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 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.

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. *Id.* at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held “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). However, 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).

The submitted information contains an adequate summary of an investigation into alleged sexual harassment. Thus, the summary is not confidential under common-law privacy. However, information within the summary that identifies the victim and witnesses, as well as the remaining information in the investigation, which we have marked, are confidential under common-law privacy and the district must withhold this information under section 552.101 on that ground.¹ See *Ellen*, 840 S.W.2d at 525. The remaining information is not confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355(a) provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). Additionally, the Third Court of Appeals has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as it “reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review.” *Abbott v. N. E. Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted section 21.355

¹As our ruling is dispositive, we do not address the other arguments of the district to withhold this information.

to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher. *See* Open Records Decision No. 643 at 3 (1996). Additionally, this office determined a “teacher” for purposes of section 21.355 means a person who (1) 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 (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. We also have determined “administrator” in 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.*

The district asserts the information at issue evaluates the performance of the named employee, who holds both teaching and administrative certificates for purposes of section 21.355. However, we find the district has not established any of the remaining information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Accordingly, the remaining information is not confidential under section 21.355, and the district may not withhold it under section 552.101 on that ground.

To conclude, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the remaining 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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 611987

Enc. Submitted documents

c: Requestor
(w/o enclosures)