



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

Ms. Martha C. Wright
Wright & Associates, P.C.
P.O. Box 531777
Grand Prairie, Texas 75053-1777

OR93-726

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552.¹ We assigned your request ID# 22569.

The Grand Prairie Independent School District (the "school district"), which you represent, has received a request for four categories of information. Specifically, the requestor seeks:

1. A copy of the tape recording made during the closed board hearing of a grievance by Ann H. Pogue on August 13, 1992.
2. A copy of any and all portions of any communications since August 13, 1992, from GPISD Supt. Marvin Crawford to the GPISD Board of Education in which reference is made to the grievance of Ann H. Pogue or the grievance hearing for her held on August 13, 1992.
3. Copies of documented evidence and detail about any investigation or investigations pursued by any GPISD administrator or administrators subsequent to the August 13, 1992[,] grievance hearing of Ann H. Pogue.
4. Copies of any and all documents held by GPISD or any of its agents which indicate or refer to Ann H. Pogue or her representative,

¹We note that the Seventy-Third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46, at 587, 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1 at 587, 597-611. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47, at 587, 988.

American Federation of Teachers Representative Sandy Kitten, being less than honest or untruthful in any statements made by either of them to any administrator or the GPISD Board of Education during the various levels of the grievance process, from Level I heard by South Grand Prairie High School Principal Vern Alexander through the Board hearing held on August 13, 1992, including any written communication from any GPISD administrator to or about Ann H. Pogue being less than honest or untruthful during any interviews or conversations about the grieved event held outside these formal hearings.

You advise us that the school district has made some of the requested information available to the requestor. The school district, however, objects to release of two documents, which you have submitted to us for review as exhibits C and D. You claim that sections 552.101, 552.102, and 552.111 of the Government Code except these exhibits from required public disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A governmental body must withhold information from required public disclosure under section 552.101 if the information meets the criteria the Texas Supreme Court articulated for common-law privacy in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public.² Section 552.102 excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test the Texas Supreme Court articulated for section 552.101. *See Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Generally, a public employee's job performance does not constitute his private affairs. Open Records Decision No. 470 (1987) at 4; *see* Open

²Section 552.101 also excepts from public disclosure information protected by constitutional privacy. The right to privacy guaranteed under the United States Constitution protects two related interests: (1) the individual's interest in independence in making certain kinds of important decisions, and (2) the individual's interest in avoiding disclosure of personal matters. *See* Open Records Decision No. 478 (1987) at 4. The first interest applies to the traditional "zones of privacy," *i.e.*, marriage, procreation, contraception, family relationships, and child rearing and education. *See* Open Records Decision No. 447 (1986) at 4. The second protects information by employing a balancing test that weighs the privacy interest against the public interest. Open Records Decision No. 478 at 4. It protects against "invasions of privacy involving the most intimate aspects of human affairs." Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490, 492 (5th Cir. 1985)). Because the information submitted to us for review does not fall within any of the zones of privacy and does not involve the "most intimate aspects of human affairs," we conclude that it may not be withheld under section 552.101 of the act in conjunction with constitutional privacy.

Records Decision Nos. 464 (1987) at 2, *overruled on other grounds* by Open Records Decision No. 538 (1990); 444 (1986) at 3; 405 (1983) at 2.

We have examined the documents submitted to us for review. They document an employee grievance (Exhibit C) and general school district staffing policies (Exhibit D). We conclude that these documents do not contain any information that is intimate or embarrassing. Moreover, the public has a legitimate interest in the job performance and employment qualifications of public employees. *See* Open Records Decision Nos. 470 at 4; 444 at 3-4. Accordingly, we conclude that the school district may not withhold these documents under sections 552.101 and 552.102 of the act.

Finally, you claim that section 552.111 of the Government Code excepts the information submitted to us for review from required public disclosure. Section 552.111 excepts information if it constitutes an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed) this office reexamined the section 552.111 exception and concluded that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5.

The information submitted to us for review relates in part to an internal administrative and personnel matter, *i.e.*, a grievance involving a school district employee. The school district may not withhold this information under section 552.111. Some of the information submitted to us for review, however, relates to general school district staff policies. We have marked information consisting of advice, recommendations, and opinions reflecting the school district's policymaking process. The school district may withhold this information under section 552.111. The school district must release the remaining information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 22569
ID# 22600

Enclosures: Open Records Decision No. 615
Submitted documents

cc: Mr. John C. Pogue
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P.O. Box 530626
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(w/o enclosures)