



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 16, 1994

Mr. Randel B. Gibbs
Law Offices of Earl Luna, P.C.
4411 Central Building
4411 N. Central Expressway
Dallas, Texas 75205

OR94-076

Dear Mr. Gibbs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 24076.

The Pilot Point Independent School District (the "district") received an open records request for a copy of a grievance filed by several district employees against another employee. You state that the district has in place a procedure for presenting and resolving employee grievances, in accordance with section 617.005 of the Government Code.² The grievance was filed with the district under that procedure.

You initially question whether the grievance is public information subject to the act, since the governing body of the district has not yet reviewed the grievance. Section 552.021(a) of the act provides as follows:

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a.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

²Chapter 617 of the Government Code prohibits public employees from going on strike. Section 617.005 provides:

This chapter does not impair the right of public employees to present grievances concerning their wages, hours of employment, or conditions of work either individually or through a representative that does not claim the right to strike.

Information is public information if, under a law or ordinance or in connection with the transaction of official business, it is collected, assembled or maintained:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

The grievance is public information within this definition. Open Records Decision No. 549 (1990) at 4.³ As such, it must be disclosed unless otherwise excepted by the act.⁴ Open Records Decision No. 470 (1987) at 2.

You also contend that release of the grievance would violate the employee's privacy rights and is therefore excepted under either section 552.101 or 552.102. The test to determine whether information is private and excepted from disclosure under either section 552.101 or section 552.102 is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). The allegations made in the grievance might be embarrassing to a reasonable person, but as the grievance concerns the job performance of a district employee, it is of legitimate public concern. Open Records Decision Nos. 470 (1987) at 4 (public has a legitimate interest in the job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is narrow).⁵ We

³You argue that the grievance is not public information as it does not appear to fall in the list of examples of public information set out in section 552.022 of the act. The types of information set forth in section 552.022 are merely examples. It is not intended to be an exhaustive list. Furthermore, it is immaterial that the governing body of the district has not yet had access to the grievance. If the district has custody of the grievance, obviously the district's governing body has a right of access to it. We note that you sent us a copy of the grievance that was filed.

⁴You point out that the Texas Open Meetings Act, chapter 551 of the Government Code, has a provision that would allow the grievance to be considered in closed executive session. You contend that allowing the written grievance to be disclosed under the Texas Open Records Act would "violate the right of privacy" provided by section 551.074, which allows "a complaint or charge against an officer or employee" to be heard in a closed meeting. We note that the Open Records Act and the Open Meetings Act operate differently and have different exceptions. The fact that a complaint could be discussed in executive session under the Open Meetings Act will not serve to make it confidential under the Open Records Act. See Open Records Decision Nos. 485 (1987) at 8-10; 605 (1992) at 2-3.

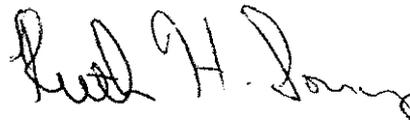
⁵The grievance must be released even though, as you state, the allegations may not be true. As we said in Open Records Decision No. 579 (1990) at 7:

Yet, we feel that the purpose of the act is best served by the disclosure of even doubtful information, even if embarrassing, if it relates to the conduct of the public's affairs.

conclude that the grievance is not excepted from required public disclosure under either section 552.101 or section 552.102 and so must be released.

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 our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 24076

Enclosures: Submitted documents

cc: Mr. David Lewis
Pilot Point Post-Signal
P.O. Box 249
Pilot Point, Texas 76258
(w/o enclosures)

(Footnote continued)

See Open Records Decision 579 at 3-8 (section 552.101, formerly section 3(a)(1), does not incorporate the tort of false light privacy, overruling prior decisions to the contrary).