



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1994

Mr. James R. Raup
McGinnis, Lockridge & Kilgore
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR94-551

Dear Mr. Raup:

On behalf of the Round Rock Independent School District ("RRISD") you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28072. The information subject to this request consists of "reports regarding the alleged cheating incidents" on the Texas Assessment of Academic Skills ("TAAS") test during the week of May 9 at three Round Rock elementary schools.

The documents that you have enclosed as responsive to the request consist of materials collected or prepared by RRISD administrators in investigating allegations of irregularities in three teachers' administration of the TAAS test in May of 1994. You state that these materials have been submitted to officials of the Texas Education Agency ("TEA"). Section 13.046 of the Education Code¹ and the TEA rule, 19 T.A.C. § 101.4,² authorize TEA to investigate this matter and to initiate disciplinary proceedings involving the teachers' Texas teaching certificates. You also state that the administrative

¹Section 13.046 of the Education Code provides that a teacher's certificate issued under the code may be suspended or cancelled by the state commissioner of education under the circumstances set out in the statute.

²The rule codified at section 101.4 of title 19, Texas Administrative Code, deals with the security of examinations administered to assess student academic achievement or performance.

proceedings which TEA may prosecute against these three teachers constitute litigation³ to which a RRISD employee may be a party and that the requested documents contain the evidence that will determine whether the teachers should be disciplined. You argue that the documents should be excepted from disclosure pursuant to section 552.103 of the Government Code, which excepts information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Gov't Code § 552.103(a).

The RRISD is not a party to the proceeding you describe and it does not relate to the district's performance of its duties. The three teachers are parties to the proceeding in their capacity as individuals holding teaching certificates issued by TEA and not as employees of the school district. *See* Open Records Decision No. 7 (1973) (holding that litigation exception does not authorize county to withhold cancelled checks related to litigation against county officers and employees for income tax violations). You do not demonstrate that the RRISD has an interest in withholding the records of the investigation pursuant to section 552.103 of the Open Records Act. Accordingly, the records may not be withheld pursuant to that section.

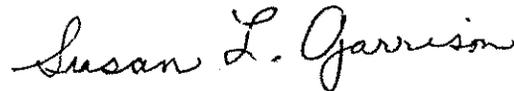
You ask whether these records may be withheld pursuant to section 552.101, which prevents the public disclosure of "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," or section 552.102 of the Government Code, which protects information from required public disclosure "if it is information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Information about how a public employee performs his or her job, including allegations that he or she performed it incorrectly, are not excepted from disclosure to the public as private information within sections 552.101 or 552.102. *See* Open Records Decision Nos. 470 (1987) at 4; 441 (1986); 405, 400 (1983).

³A contested case under the Administrative Procedure Act is litigation for purposes of section 552.103 of the Government Code. Open Records Decision No. 588 (1991).

You finally state that the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, *see* Gov't Code § 552.026, and section 552.114 of the Government Code require you to delete personally identifiable information from students' statements. We agree, and have marked the information that must be deleted from students' statements. *See* Open Records Decision Nos. 462 (1987); 447 (1986); 332 (1982). The records also include the names and identification numbers of students in the three classes where the alleged irregularities took place. The students' names that constitute directory information must be made available to the public, while the identification numbers are excepted from disclosure under the Open Records Act. *See* Open Records Decision Nos. 244, 242 (1980). The remaining records must be disclosed to the requestor.

Because prior published open records decisions resolve your request, we are resolving this matter with an 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,



Susan L. Garrison
Assistant Attorney General
Open Government Section

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Ref.: ID# 28072

Enclosures: Open Records Decision No. 7
Marked documents

cc: Mr. Daniel J. Vargas
Metro Reporter
Austin American-Statesman
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(w/o enclosures)