



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 28, 1994

Mr. S. Stephen Hilmy
Gary, Thomasson, Hall & Marks
Attorneys at Law
P.O. Box 2888
Corpus Christi, Texas 78403

OR94-748

Dear Mr. Hilmy:

As counsel for the Flour Bluff Independent School District ("the school district"), 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# 29178.

The school district received a request for information under the Open Records Act on June 9, 1994. You say the school district has made available for review all of the requested information with the exception of one item, "portions of the employees' evaluations that are not exempted by ORA." You requested a decision from this office on September 15, 1994. Consequently, you failed to request a decision within the ten days required by section 552.301(a) of the Government Code.

Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

Generally, the presumption of openness may be overcome where the information at issue is deemed confidential by some source of law outside of the Open Records Act, so as to except the information from disclosure under section 552.101 of the Government Code, or where the interest of a third party is at stake. Where information implicates the privacy interest of a third party, the information must be withheld from public disclosure even though the governmental body maintaining the information has failed to make a timely request for an open records decision. Open Records Decision No. 630 (1994) at 3.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. See *id.*

The public has a legitimate interest in the job performance of public employees. See Open Records Decision No. 444 (1986). Therefore, we do not believe that the privacy rights of the employees who are the subject of the evaluations are implicated.

You also raise section 552.111 of the Government Code. However, the fact that requested information may be within this exception does not provide a compelling reason to overcome the presumption of openness under section 552.302 of the Government Code. See Open Records Decision No. 515 (1988).

Consequently, you have not shown compelling reasons why the information at issue should not be released. The information is presumed to be public and 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,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/JRG/rho

Ref.: ID# 29178

Enclosures: Submitted documents

cc: Mr. H. L. Markoff
P.O.Box 18023
Corpus Christi, Texas 78418
(w/o enclosures)