



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1995

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

OR95-591

Dear Mr. Raup:

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# 32304.

The Round Rock Independent School District (the "district") received a request for copies of all documents and statements made by students and district personnel pertaining to allegations of child abuse against the requestor, a substitute teacher, at Brushy Creek Elementary School on a particular date. You claim that the information is excepted from disclosure pursuant to sections 552.101, 552.102, and 552.114. You provided copies of the documents you believe are excepted from required public disclosure.

Section 552.101 of the act protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Chapter 34 of the Family Code concerns reports of abuse of a child to local law enforcement agencies and other agencies responsible for the protection of children. See Family Code § 34.012. Section 34.08(a) of the Family Code provides:

Except as provided in Subsections (b) and (c)¹ of this section, the reports, *records*, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency. [Emphasis and footnote added.]

¹Subsections (b) and (c) relate to the disclosure of records concerning an investigation of an adopted child to the adoptive parents, prospective adoptive parents, or to the child upon reaching adulthood. Neither subsection is applicable to the current request.

You have not indicated, nor is it clear from the records at issue, whether the requested records have been provided to any child protective service agency during its investigation. If the district in fact has provided these records to a child protective service agency, such as, Child Protective Services or to a local law enforcement agency, the district must withhold these records from the public in their entirety pursuant to section 552.101 in conjunction with section 34.08(a) of the Family Code.

However, in the event that such a transfer of information has not taken place, we now discuss the applicability of the doctrine of common-law privacy in conjunction with section 552.101. For information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)).

Section 552.102 excepts:

(a) . . . information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102 together.

Although information relating to an investigation of a public employee may be embarrassing, the public generally has a legitimate interest in knowing about the job performance of a public employee. See Open Records Decision Nos. 444 (1986), 405 (1983). In addition, the public has a legitimate interest in the job qualifications of public employees, and the reasons for their dismissal, demotion, promotion or resignation. Open Records Decision Nos. 470 (1987), 467 (1987), 444 (1986), 405 (1983).

We have examined the information submitted to us for review and conclude that there is a legitimate public interest in it. Accordingly, the information may not be withheld from required public disclosure on the basis of any common-law privacy interests of the employee under investigation.²

You ask that we determine if some or all of the requested information is excepted from disclosure pursuant to section 552.114 of the Government Code. Under section 552.114(a), information is excepted "if it is information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 also relates to withholding of education records and incorporates the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), into the Open Records Act, providing that the act

does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026; *see also* Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) . . .) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

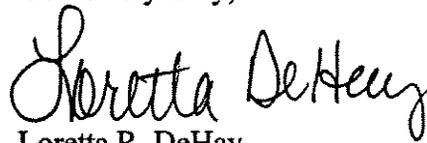
Id. § 1232g(a)(4)(A). However, sections 552.114(a) and 552.026 of the Government Code may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a particular student" or "one or both parents of such a student." Open Records Decision No. 332 (1982) at 3. Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure. The submitted

² Student privacy interests are discussed in conjunction with sections 552.026 and 552.114 of the Government Code and the Federal Educational Right to Privacy Act.

information consists of a memorandum between two district employees concerning the incident and handwritten statements by students. We conclude that release of most of the information would tend to identify the students involved to any person familiar with the events that occurred. If section 34.08 of the Family Code is not applicable, you must withhold the information pursuant to sections 552.114 and 552.026, except for the information we have noted on the enclosed documents.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/LMM/rho

Ref.: ID# 32304

Enclosures: Marked documents

cc: Ms. Mary Hoban