



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 20, 1995

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

OR95-1102

Dear Ms. Wright:

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# 34864.

The Grand Prairie Independent School District received a request for "[t]he minutes of ALL meetings (both regular and special) of the Board of Trustees of the Grand Prairie ISD from August 20, 1992, to May 11, 1994, inclusive" and

[a]ll communiques, letters, memorandums or other forms of written communications from Marvin Crawford to the members of the Board of Trustees of the Grand Prairie ISD or to administrators regarding grievances or aggrieved person or persons which were written either prior or subsequent to Level III grievance hearings.

You state that you have provided the requestor with the minutes of board meetings. You have also included a list of communiqués provided to the requestor. You contend, however, that portions of the remaining information are excepted under sections 552.101, 552.102, and 552.111 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must contain highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, *and* the information must not be of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in

*Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683.

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.) (court ruled that test to be applied in decision under statutory predecessor to § 552.102 was the same as that delineated in *Industrial Found.* for statutory predecessor to § 552.101). Accordingly, we will consider the arguments for withholding information from required public disclosure under section 552.101 and section 552.102 together.

We have reviewed the information you marked and submitted for our consideration. One document contains highly intimate or embarrassing facts. See *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied). We have marked the information that must be withheld under common-law privacy. We note, however, that the document appears on its face to have at least another page of information. If this is indeed the case, you must redact the names of witnesses of sexual harassment. The remaining documents submitted for our review do not contain highly intimate or embarrassing facts. Moreover, there is a legitimate public interest in the job performance of a public employee. See Open Records Decision Nos. 484 (1987) (public interest in knowing how police department has resolved complaints against police officer ordinarily outweighs officer's privacy interest, even if some complaints are found to be "unfounded" or "not sustained"), 470 (1987) (public employee's job performance does not generally constitute his private affairs). Accordingly, except for the marked information on Communiqué B-3644, you may not withhold the submitted information under sections 552.101 and 552.102 of the Government Code as they incorporate common-law privacy.<sup>1</sup>

Section 552.111 excepts "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Section 552.111 excepts from public disclosure only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. *Id.* Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

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<sup>1</sup>You also contend that "every employee . . . is entitled to have his or her name removed from all documents . . . pursuant to [§]§ 552.101 and 552.102." A public employee's name is public information, it is not protected by common-law privacy. Open Records Decision Nos. 557 (1990) (Gov't Code § 552.022 specifically makes public names of all employees of governmental body), 342 (1982) (name, position, experience, tenure, salary, and educational level of public employees must be disclosed); see also Open Records Decision No. 554 (1990) (names of employees of private company are not protected by common-law privacy).

We agree that portions of the submitted documents constitute advice, recommendations, opinions, and other material reflecting the policymaking processes of the school district. However, information relating only to a specific employee's grievance or the recitation of set policy standards are not excepted under section 552.111. For your convenience, we have marked the information that may be withheld under section 552.111. Except where noted above, the remaining information must be released to the requestor.

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 Records Division

LRD/LBC/rho

Ref: ID# 34864

Enclosures: Marked documents

cc: Ms. Ann H. Pogue  
(w/o enclosures)