Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 6, 1995

Ms. Laura S. Fowler
Henslee, Ryan & Groce
Great Hills Plaza
9600 Great Hills Trail, Suite 300 West
Austin, Texas 78759-6303

OR95-1370

Dear Ms. Fowler:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 36233.

You indicate that the Sinton Independent School District received an open records request for a particular internal report. You contend that sections 552.102 and 552.111 of the Government Code except the requested report from disclosure. You, however, have not submitted to this office all the information that you are required to submit and that was requested by this office. *See* Act of May 26, 1995, H. B. 1718, 74th Leg., R.S., ch 1035, §§ 18, 19, 1995 Tex. Sess. Law Serv. 5127, 5139 (to be codified at Gov't Code §§ 552.301, .303). You did not submit a copy of the written request for information, nor did you submit written comments explaining why the stated exceptions apply to the requested information.

On October 9, 1995, our office notified you by letter sent via facsimile that you had failed to submit the required information. We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that failure to comply would result in the legal presumption that the requested information is public information. *See id.* at § 19, 1995 Tex. Sess. Law Serv. 5127, 5139 (to be codified at Gov't Code § 552.303(e)).

You did not provide our office with the information requested in our October 9, 1995, notice to you. Therefore, the information that is the subject of this request for information is presumed to be public information. *See id.* Information that is presumed public must be released unless a governmental body demonstrates a compelling interest

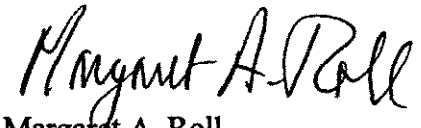
to withhold the information to overcome this presumption. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ). Compelling circumstances arise when the requested information is made confidential by law or when a third-party's interests are at stake. *See, e.g.*, Open Records Decision No. 150 (1977) at 2.

In this case, your claim that section 552.102 excepts from disclosure the requested information is not a compelling reason to withhold the information. Section 552.102(a) protects information in a personnel file only if its release would invade the privacy of the employee under the test articulated for common-law privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The information in this case meets neither of these prongs. Very little of the information identifies any specific individuals. Furthermore, all the information is of a legitimate public interest.

In addition, a claim that section 552.111 excepts information from disclosure is never, by itself, a compelling reason to withhold information. Section 552.111 is designed protect the interests of the governmental body, not the interests of a third party. *See* Open Records Decision No. 293 (1981) at 2. Furthermore, a governmental body may waive the protection of section 552.111 and release information that might otherwise be protected by section 552.111. Open Records Decision No. 470 (1987) at 7. Thus, you may not withhold the requested information under either section 552.102 or section 552.111, and you must release it in its entirety.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Records Division

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Ref.: ID# 36233

Enclosures: Submitted documents