



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 25, 1996

Mr. William H. Bingham
McGinnis, Lockridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress
Austin, Texas 78701

OR96-0076

Dear Mr. Bingham:

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 # 37576.

In particular you seek to withhold a copy of an employee complaint under sections 552.101, 552.102, 552.103, or 552.111 of the Government Code. The complainant is employed as a principal by the Round Rock Independent School District ("RRISD").

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common-law privacy and excepts from disclosure private facts about an individual. *Industrial Foundation of the S. v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Thus information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.*; Open Records Decision No. 409 (1984) at 1.

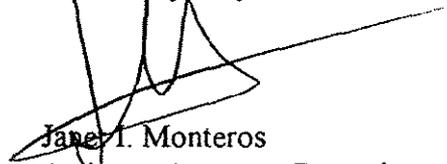
The test to be applied in determination of a legitimate public interest was amplified in *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex.App.-Austin 1983, writ ref'd n.r.e.). Because there is a legitimate public interest in the activities of public employees in the workplace, information about public employees is commonly held not to be excepted from required disclosure under this test. After reviewing the information submitted for our review, we conclude that none of the information you presented us regarding the employee complaint is highly intimate and embarrassing and of no public interest.

You also invoke the litigation exception. That the employee who filed the complaint may at some point be dissatisfied with the results of the local grievance process is too remote and conjectural to conclude at this time that future litigation is reasonably anticipated. Open Records Decision No. 582 (1990) at 3. The litigation exception requires more objective indications that the complainant intends to follow through with the threat of litigation. *See*, Open Records Decision 452 (1986). Thus, you may not withhold the information under section 552.103.

You also cite section 552.111 in support of withholding the employee complaint. Section 552.111 excepts from required public disclosure “[a]n interagency or interagency memorandum or letter that would not be available by law to a party in litigation with the agency.” Section 552.111 applies only to internal communications consisting of advice, recommendations, or opinions reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. The policymaking functions of an agency do not, however, encompass internal administrative and personnel matters. *Id.* The employee complaint filed against the hearing officer of the agency is an internal personnel matter and therefore does not come under this exception. Accordingly, the copy of the employee complaint must be released.

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,



Jane I. Monteros
Assistant Attorney General
Open Records Division

JIM/ch

Ref.: ID# 37576

Enclosures: Submitted documents

cc: Mr. Terry Byfield
Live Oak Parent Group
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Austin, Texas 78729
(w/o enclosures)