



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 15, 1996

Ms. Merri Schneider-Vogel  
Bracewell & Patterson, L.L.P  
South Tower Pennzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR96-0544

Dear Ms. Schneider-Vogel:

On behalf of the San Jacinto College District (the "district"), you ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38332.

The district received a request "to look at Beverly Farmer's file." Ms. Farmer is a former district teacher and administrator. You say the district will give the requestor access to most of the documents in Ms. Farmer's file. However, you assert that two sets of documents in the requested personnel file are excepted from required public disclosure. The first set of documents the district asserts are excepted from disclosure contain information that concerns Ms. Farmer's health. The second set of documents the district asserts are excepted from disclosure are evaluations of Ms. Farmer's performance as a teacher and administrator.

You contend the evaluations are made confidential by Education Code section 21.355. This office currently is considering the scope of the confidentiality provision you raise in a pending open records decision, ORQ-7. Accordingly, we are severing the issue of the public disclosure of Ms. Farmer's evaluations and creating a separate file pending the issuance of ORQ-7. We are assigning the new file ID# 40010. In this ruling, we only address the public release of the first set of documents that concern Ms. Farmer's health.

You assert that the documents that concern Ms. Farmer's health are excepted from required public disclosure based on section 552.101 in conjunction with the common-law right to privacy. 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.*

While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstretical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

We agree that one portion of the information you highlighted is protected from required public disclosure under section 552.101 and the common-law right to privacy. However, we believe the public has a legitimate interest in the remainder of the highlighted information. We have marked the documents to indicate the information the district must withhold from the public pursuant to section 552.101 and the common-law right to privacy.

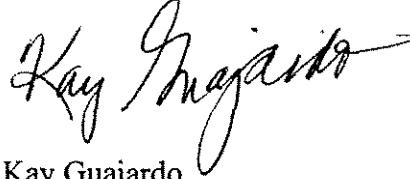
Some of the information constitutes medical records subject to the Medical Practice Act. *See* V.T.C.S. art. 4495b, §5.08. The district must release the medical records that are subject to the Medical Practice Act in accordance with that statute. *See* Open Records Decision No 565 (1990). We have marked the records that are subject to the Medical Practice Act. *See id.* § 5.08 (b).

Finally, we note that the documents contain some information that may be excepted from required public disclosure pursuant to section 552.117 if Ms. Farmer chose in accordance with section 552.024 of the Government Code to keep that information confidential. We have marked the documents accordingly. *See* Open Records Decision Nos. 622 (1994), 530 (1989).

We are resolving this matter with this 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 may 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,

A handwritten signature in black ink that reads "Kay Guajardo". The signature is written in a cursive, flowing style.

Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 38332,40010

Enclosures: Marked documents

cc: Shirley Baker  
3901 Ann Lane  
Pearland, Texas 77584  
(w/o enclosures)