



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 4, 1996

Mr. Joe Hairston
Walsh, Anderson, Underwood,
Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR96-0869

Dear Mr. Hairston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39412.

The Magnolia Independent School District (the "district"), which you represent, received a request for information seeking

A. Copies of objective observations of facts and events as contained in any appraiser's notes during her employment with M.I.S.D., as well as any that may have been obtained from any previous school districts that employed Ms. Mitchke and were made part of her personnel file at M.I.S.D.

B. Copies of any statistical compilations of anonymous student evaluations of Ms. Mitchke.

C. Copies of minutes or recordings of meetings attended by administrators, teachers, and employee representatives that involve Ms. Mitchke where final action was taken.

D. Copies of administrative staff manuals and instructions to Ms. Mitchke that affect the classroom policies and procedures, and

E. Copies of any other public records, including documents, writings, letters, memoranda, or other material containing public information, pertaining to the employment history of Ms. Mitchke

that is not protected from disclosure by constitutional, statutory or judicial decisions.

You state that you will release the requested materials in D above. You state that the information requested in B and C above does not exist, and therefore, cannot be disclosed. The Open Records Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 (1986) at 3. You argue, however, that the remaining information requested in A and E above is excepted from required public disclosure by sections 552.101, 552.102, and 552.222 of the Government Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In the last legislative session, Senate Bill 1 was enacted, which added section 21.355 to the Education Code. Section 21.355 provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). We enclose a copy of Open Records Decision No. 643 (1996) for your information. In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.*

Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the documents submitted to this office as responsive to A are confidential under section 21.355 of the Education Code. We also conclude that the documents submitted to this office as responsive to both A and E are also confidential under the Education Code except for the two documents which we have marked, the memorandum dated June 9, 1986, to Mr. Charles Whatley from Barbara L. Sultermier and the letter dated May 25, 1984, from Mr. George T. Branch. These two documents do not evaluate a teacher or administrator. Therefore, pursuant to section 552.101 of the Government Code, the school district must withhold those documents marked as responsive to both A and E except for the two specific documents we have marked in the materials.

You also argue that the request for information in item E above is overly broad and that you cannot determine with sufficient specificity the documents sought by the requestor. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the district must make a good-faith effort to relate the request to information in the district's possession and must help the requestor to clarify his request by advising him of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 (1990) at 8. In this case, you state that you have asked the requestor to clarify his request for information in E.

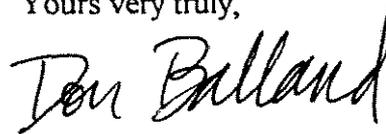
You have, however, submitted several documents which you state are responsive to the request for information in E. As noted above, the submitted documents must be withheld except for the two specific documents listed. You further argue that if the requestor seeks the personnel file of Ms. Mitchke, which item E appears to include, that information is excepted from required public disclosure by section 552.102.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Foundation v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, 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. *Industrial Foundation*, 540 S.W.2d at 685; Open Records Decision No. 611 (1992) at 1. Because you have failed to submit the personnel file or other responsive documents with your request for a decision, we are unable to determine if there is any protected information within the requested materials. For your information,

however, we will provide you with a sampling of those common types of information deemed confidential under common law privacy.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 39412

Enclosures: Open Records Decision No. 643 (1996)
List of Confidential Information
Marked documents

cc: Mr. Daniel A. Hall
8442 Prine Lane
Magnolia, Texas 77355
(w/o marked documents; w/ Open Records Decision No. 643 (1996) and
List of Confidential Information)