



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 17, 1996

Mr. Craig H. Smith
Deputy General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR96-0969

Dear Mr. Smith:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40025.

The Texas Workers' Compensation Commission (the "commission") has submitted to this office information that is responsive to a request for information from the Texas Hospital Association (the "association"). You explain that the information at issue is subject to a protective order still in effect and the underlying litigation is pending. You state:

a court, by order (i.e. the above-referenced "Protective Order") has prohibited disclosure of the information. In addition, where provision for release have been made, they have not yet been interpreted by the court to apply to this request.

The requestor submitted the following written request:

As Claudia Nadig has advised me in a fax letter dated April 1st, my request to inspect and/or copy the payor contracts submitted by hospitals pursuant to the protective order entered in Cause No. 96-01485 should be directed to your attention.

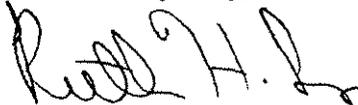
Paragraph 7(a) of the Protective Order provides that no document designated confidential may be disclosed to any person other than parties in this action and counsel. As legal counsel for the Texas Hospital Association, a named party in this action, I hereby request

access to the documents produced by Hospitals pursuant to this Order.

Section 552.107(2) provides that information is excepted from disclosure if "a court by order has prohibited disclosure of the information." See Open Records Decision No. 415 (1984) at 2. It appears that a protective order issued by the 126th Judicial District is applicable to this information. Apparently, there is disagreement between the commission and the association as to the access provisions of the protective order. We note that this question should be directed to the court that actually issued the protective order.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 40025

Enclosures: Submitted documents

cc: Mr. Charles W. Bailey
General Counsel
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(w/o enclosures)

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State of Texas

DAN MORALES
ATTORNEY GENERAL

June 17, 1996

Mr. Bob J. Ramirez
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR96-0970

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39858.

The Harlandale Independent School District (the "school district"), which you represent, received a request for "a copy of the letter of reprimand given to Superintendent Richard Marquez at his last evaluation." You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.104, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claimed and have reviewed the document at issue.

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 passed, 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.* We assume for purposes of this ruling that the superintendent is an administrator, holding the appropriate administrator's certificate. See 19 T.A.C. § 137.304. We conclude that the document submitted to us for

review, a letter of reprimand, does not "evaluate" the superintendent's performance. Therefore, the school district may not withhold the requested information under section 21.355 of the Education Code.

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 v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. Therefore, we must address whether the requested information is protected by common-law privacy.

Section 552.101 encompasses common-law privacy and excepts from disclosure private facts about an individual. Under common-law privacy, 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.* at 685; Open Records Decision No. 611 (1992) at 1. 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. 540 S.W.2d at 683. Here, there is nothing in the requested letter of reprimand that is highly intimate and embarrassing. Therefore, the school district may not withhold the requested information under section 552.102.

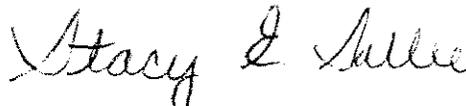
Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. See Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. See Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2. Here, the school district has not indicated any particular competitive situation, such as an open bid, that would be harmed by disclosure of the requested information. Therefore, the school district may not withhold the requested information under section 552.104.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. The submitted letter of reprimand is not "privileged information" as defined by Open Records Decision No. 574 (1990). Therefore the school district may not withhold this information under section 552.107(1).

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. The requested information relates to a personnel matter, *i.e.*, issuing a letter of reprimand to a superintendent of schools. Therefore, section 552.111 does not except the requested information from required public disclosure.

In summary, none of the exceptions claimed by the school district excepts the requested information from required public disclosure. The requested 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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallée
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 39858

Enclosures: Submitted documents; Open Records Decision No. 643 (1996)

cc: Ms. Cindy Ramos
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(w/o submitted documents; w/Open Records Decision No. 643 (1996))