



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1996

Ms. Nancy McNeal
Superintendent
P.O. Drawer Z
East Bernard, Texas 77435

OR96-2080

Dear Ms. McNeal:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 38757.

The East Bernard Independent School District (the "district") received a request for two categories of information concerning a specific grievance hearing. You claim that the requested documents are excepted from required public disclosure by sections 552.101 and 552.102 of the Government Code. You state that two specific documents are responsive to the request. In Open Records Letter No. 96-0202 (1996), this office ruled on one of those documents, the written complaint presented at a closed session of the school board. We now address whether you must withhold the other document you have submitted to our office for review, a letter from Mr. Wayne Robinson dated November 19, 1995.

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 that, "[a]ny 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.* After reviewing the submitted document, we conclude that the letter from Mr. Wayne Robinson dated November 19, 1996 is not confidential under section 21.355 of the Education

Code. We do not believe that the record is a document that evaluates, as that term is commonly understood, the performance of a teacher or administrator.

You next contend that the document is protected from 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 Open Records Act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, we will address whether common-law privacy protects the document from disclosure. Common-law privacy excepts from disclosure private facts about an individual. *Id.* 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. We do not believe that the submitted document is highly intimate and embarrassing. We therefore conclude that the record is not protected by common-law privacy.

You finally argue that the document is confidential because it was sealed with the records of a closed meeting of the school board. As explained in Open Records Letter No. 96-0202 (1996), we do not believe that the district may withhold the document for this reason. Open Records Decision No. 605 (1992). The district must therefore release the requested document.

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 questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref: ID# 38757

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

cc: Ms. Cynthia Klopsteck
Rt. 2, Box 237-C
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(w/o enclosures)