



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 17, 1997

Dr. Gerald E. Anderson  
Superintendent  
Brazosport, I.S.D.  
P.O. Drawer Z  
Freeport, Texas 77541

OR97-0098

Dear Dr. Anderson:

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# 103136.

The Brazosport Independent School District (the "district") received a request for certain information relating to fourteen district employees. You state that some of the requested information has previously been provided to the requestors. You assert, however, that part of the remainder of the information requested does not exist, and that which does is contained in the district's personnel files and is protected from disclosure under sections 552.101 and 552.102 of the Government Code.

Initially, with regard to the information requested which you assert does not exist, Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 (1990) at 8. If the district holds information from which the requested information can be obtained, the city must provide that information to the requestor unless it is otherwise excepted from disclosure.

We will next consider your arguments for withholding the requested information which does exist. We note that the district submitted to this office for review only blank, form documents. We assume these documents are representative samples of the documents requested,

but since they are not filled in, these documents are not confidential. To the extent the district has filled-in versions of the documents submitted to this office, which contain social security numbers, appraisals and evaluations for the last ten years, references upon or prior to employment, and employment applications for the named employees, these documents may be confidential by law.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision and incorporates the doctrine of common-law privacy. For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together.

Having reviewed the information submitted to this office, we find no information which is highly intimate and embarrassing to a person of ordinary sensibilities. Moreover, the public has a legitimate interest in this information. *Cf.* Open Records Decision No. 455 (1987) at 9 (public has an interest in applicant's past employment record and suitability for position in question). In the past, this office has concluded that common-law privacy does not protect information about the educational training of an applicant or employee; names and addresses of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and telephone numbers of character references; and information about job performance. *See Id.* Consequently, we conclude that you may not withhold the requested information under section 552.101 or 552.102 of the Government Code in conjunction with common-law privacy.

Section 552.101 also 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 evaluations or appraisals of those employees of the district who held teaching or administrative positions and the appropriate certification at the time of the evaluation, are confidential under section 21.355 of the Education Code and thus are excepted from disclosure under section 552.101.

We also note that certain of the submitted documents contain spaces for the employees' addresses, social security numbers and home telephone numbers. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not requested confidentiality under section 552.024 at the time this request for the information was made.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/ch

Ref.: ID# 103136

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

cc: Mr. Donald LeGrand  
110 Daisy  
Lake Jackson, Texas 77566  
(w/o enclosures; w/Open Records Decision No. 643 (1996))