



Office of the Attorney General
State of Texas

February 13, 1997

DAN MORALES
ATTORNEY GENERAL

Ms. Myra A. McDaniel
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR97-0339

Dear Ms. McDaniel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103832.

The Austin Independent School District (the "district"), which you represent, received a request for the following information:

1. The most current resume on file for Shelly Pittman, former principal at McCallum High School;
2. Any police or incident report generated in the process of investigating Shelly Pittman in connection with his removal as principal at McCallum High School.

The district has already released a copy of Mr. Pittman's current resume to the requestor. However, you contend that the remaining documents, an incident report and a memorandum, are excepted from disclosure under sections 552.026, 552.101, 552.102, 552.108, and 552.114 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. In accordance with Open Records Decision No. 634 (1995), you redacted student names and other identifying information from the incident report and memorandum prior to submitting those documents to this office. Therefore, we need not address your arguments under sections 552.026 and 552.114. Furthermore, the conclusions reached in

this informal letter ruling apply only to the de-identified versions of the documents.

Section 552.108 excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime,” and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.¹ *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref’d n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). The incident report, which was prepared by the district police department is the type of information that section 552.108 is intended to protect. We therefore conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the incident report from required public disclosure.

We do not believe that section 552.108 excepts the memorandum from disclosure. Thus, we must consider whether sections 552.101 and 552.102 except the memorandum from disclosure. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

The memorandum deals with allegations that Mr. Pittman sexually harassed individuals at McCallum High School. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public’s interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held

¹The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

The memorandum, labeled Exhibit 3, is a summary of the allegations made against Mr. Pittman. Exhibit 3 has already been de-identified and, therefore, does not identify alleged victims or witnesses. Based on *Ellen*, we find that the public has a legitimate interest in the memorandum. We note also that this office has consistently held that the public has a legitimate interest in the job performance of public employees. See Open Records Decision Nos. 473 (1987) at 3, 470 (1987) at 4, 464 (1987) at 2. Accordingly, we conclude that the district must release the de-identified memorandum labeled Exhibit 3 to the public.²

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 any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 103832

Enclosures: Submitted documents

cc: Ms. Jodi Berls
Staff Reporter
Austin American-Statesman
P.O. Box 670
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(w/o enclosures)

²You submitted two copies of the memorandum to this office, one labeled Exhibit 3 and one labeled Exhibit 5. You de-identified Exhibits 3 and 5 in accordance with Open Records Decision No. 634 (1995). Additionally, you redacted from Exhibit 5 information that you suggest should be excepted from disclosure under sections 552.101 and 552.102. Exhibit 3 is the version of the memorandum that must be released to the public.

