



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 3, 1997

Mr. Robert S. Johnson
Chappell & McGartland
1800 City Center Tower II
301 Commerce Street
Fort Worth, Texas 76102-4118

OR97-0688

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 104976.

The Fort Worth Independent School District (the "district"), which you represent, received a request relating to the personnel file of a teacher. You have released the requested documents, except for three documents that you claim are excepted from required public disclosure by section 552.101 of the Government Code in conjunction with common-law privacy rights and Education Code section 21.355. We have considered the exceptions you claim and have reviewed the documents you have provided to this office.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by 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). 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.* Based on the reasoning set out in Open Records Decision No. 643 (1996), we conclude that the two form documents which evaluate a teacher are confidential under section 21.355 of the Education Code. Therefore, pursuant to section 552.101 of the Government Code, the district must withhold the two form documents.

Section 552.101 also incorporates the common-law right of privacy which excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. Although information relating to the investigation of sexual harassment or sexual assault involving public employees may be highly intimate or embarrassing, the public generally has a legitimate interest in knowing the details of such an investigation. Open Records Decision No. 444 (1986). Therefore, the district must release the two pages of handwritten notes. However, identifying information about the victim of the alleged sexual harassment is protected by the doctrine of common-law privacy and must be withheld. *Morales v. Ellen*, 840 S.W.2d 519, 525 (Tex. App.--El Paso 1992, writ denied). We marked the type of identifying information that must be withheld.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref: ID# 104976

Enclosures: Marked documents

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(w/o enclosures)