



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 7, 1997

Mrs. Lynn Rossi Scott
1323 West Pioneer Parkway-Spur 303
Arlington, Texas 76013

OR97-1051

Dear Mrs. Scott:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106227.

The Hurst-Eules-Bedford Independent School District (the "district"), which you represent, received a request for information concerning a named teacher. The requestor specifically asked for complaints against the teacher and information about actions taken against the teacher. You assert that the information at issue is excepted from disclosure pursuant to section 21.355 of the Education Code, in conjunction with section 552.101 of the Government Code. You also contend that responsive documents are protected from disclosure under the doctrine of common-law privacy and false-light privacy under section 552.102 of the Government Code. As to the information in the documents that identifies students and their parents, you assert that this information is protected from disclosure under federal law and section 552.114 of the Government Code.

You initially ask this office to "confirm that the District is not required to provide any information which does not currently exist in written form." You also inquire as to whether verbal conversations are discloseable until or "unless those conversations have been reduced to writing on some recordable media." The district has an obligation to make a good faith effort to locate requested records. Open Records Decision No. 561 (1990) at 8. But, the district is not generally obligated to provide information which is not in its possession or to compile new information. Open Records Decision Nos. 561 (1990) at 9 (city does not have to obtain new information), 483 (1987) at 2, 452 (1986) at 3 (open records request applies to information in existence when request is received), 362 (1983) at 2 (city does not have to supply information which does not exist).

However, chapter 552 encompasses more than simply "written information." Section 552.002 provides that public information may exist in a variety of formats, including film, tape, and voice, data, or video representations held in computer memory. Thus, if the district has responsive information that is not in a written form but exists in one of the other forms described in section 552.002, such information is subject to disclosure pursuant to

chapter 552 of the Government Code. We note that, pursuant to sections 552.301 and 552.302, information that is not submitted to this office for a decision is presumed to be public.

We will address your arguments concerning the documents submitted to this office. You assert that all responsive information, including correspondence from parents concerning the teacher, is excepted from disclosure pursuant to section 21.355 of the Education Code, in conjunction with section 552.101 of the Government Code. Section 552.101 protects from disclosure information made confidential by other law. Section 21.355 of the Education Code provides that, "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office has interpreted section 21.355 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 agree that the documents labeled as Exhibit B are evaluations that must be withheld from disclosure pursuant to section 21.355.

You also assert that other documents, labeled as Exhibit C, constitute documents evaluating the performance of the teacher as that term is commonly understood. Most of the documents in Exhibit C are complaints from parents, handwritten notes, and notations on calendars. We disagree that these documents are evaluations made confidential by section 21.355 of the Education Code.

You have also asserted that the documents in Exhibit C are protected from disclosure on the basis of common-law privacy and false-light privacy under section 552.102. Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to determine whether information is private and excepted from disclosure under the doctrine of common-law privacy, as protected by section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

The records in Exhibit C relate to the job performance and work behavior of a public employee. There is a legitimate public interest in the qualifications of a public employee and in how he or she performs job functions. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees), 423 (1984) at 2 (scope of public employee privacy is narrow). Exhibit C is not excepted from disclosure on the basis of common-law privacy as protected under section 552.102.

You state that many of the complaints about the named teacher were shown to be unfounded. You thus assert that release of the requested information would place the teacher in a false light. The Texas Supreme Court has held that false-light privacy is not an actionable tort in Texas. *See Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994). Moreover, this office has determined that section 552.101 does not incorporate the common-law tort

of false-light privacy. Open Records Decision No. 579 (1990). In Open Records Decision No. 579 (1990) at 7, this office stated that "the purpose of the act is best served by the disclosure of even doubtful information, even if embarrassing, if it relates to the conduct of the public's affairs." Exhibit C is not excepted from disclosure on the basis of false-light privacy.

We note that the district has redacted the documents in Exhibit C in accordance with Open Records Decision No. 634 (1995). 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 ("FERPA"), title 20 of the United States Code, section 1232g, without the necessity of requesting an attorney general decision concerning these records, 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. Except for the documents and portions of documents that must be withheld under FERPA and section 552.114 of the Government Code, the remaining Exhibit C documents must be disclosed.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 106227

Enclosures: Marked documents

cc: Kendall Anderson
The Dallas Morning News
Communications Center
Dallas, Texas 75265
(w/o enclosures)

