



Office of the Attorney General

State of Texas

September 10, 1998

DAN MORALES
ATTORNEY GENERAL

Mr. Terry L. Kyle
Walsh, Anderson, Brown,
Schulze & Aldridge
P.O. Box 460606
San Antonio, Texas 78246-0606

OR98-2146

Dear Mr. Kyle:

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# 117923.

The Alamo Community College District (the "district"), which you represent, received a request for access to the student course evaluations of six particular math instructors for the spring semester of 1998.¹ You contend that the spring course evaluations are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. You also contend that the spring course evaluations are excepted from disclosure under section 552.102 of the Government Code.

The district received a supplemental request from the same requestor for access to "student course critiques" for certain pre-calculus and calculus courses offered during the first summer session of 1998. You argue that the summer course evaluations "do not fall within the definition of governmental records by virtue of the fact that District policy does not require course evaluations for the summer." In the alternative, you argue that the summer course evaluations are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. We have considered your arguments and have reviewed a representative sample of the documents at issue.²

¹A letter that you sent to the requestor indicates that you have provided him with the information he requested about 15 math courses identified by "call number."

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records

First, we consider whether the summer course evaluations are subject to disclosure under the Open Records Act. You contend that the summer course evaluations are not subject to the Open Records Act because the district does not require course evaluations for its summer courses. You inform us that one professor did collect evaluations for his summer course, but you indicate that these evaluations are in the possession of the professor, not the district.

Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Information concerning the official business of a governmental body is "public information" under section 552.002 and is subject to the Open Records Act regardless of whether an individual member of a governmental body or the officer for public information holds the information. See Open Records Decision No. 635 (1995); cf. Open Records Decision No. 332 (1982). Although the professor who collected evaluations for his summer course was not required to do so, he collected the evaluations in his official capacity as a professor for the district. For these reasons, we find that the summer course evaluations are information collected by the district in connection with the transaction of its official business. Thus, the summer course evaluations are subject to release under the Open Records Act.

Next, we consider whether the spring and summer course evaluations are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 21.355 of the Education Code provides, "A 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). In Open Records Decision No. 643 (1996), this office 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.*

This office previously determined that section 21.355 does not apply to the district. In Open Records Letter No. 97-1974 (1974), we concluded that section 21.355 is applicable only to public school districts and not to junior college districts. Thus, section 552.101 does not except the requested course evaluations from disclosure. We have enclosed a copy of Open Records Letter No. 97-1974 for your review.

to the extent that those records contain substantially different types of information than that submitted to this office.

Finally, we consider whether the spring and summer course evaluations are excepted from disclosure under section 552.102 of the Government Code. 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 from disclosure 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.).

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 of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (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. *Id.* at 685. The court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Having reviewed the sample course evaluations submitted to this office, we find that they are not protected by the common-law right to privacy. *See* Open Records Decision Nos. 473 (1987) (public has legitimate interest in job performance of public employees), 470 (1987) (public employee's job performance does not generally constitute his private affairs). Therefore, the district must release the spring and summer course evaluations to the requestor.

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,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 117923

Mr. Terry L. Kyle - Page 4

Enclosures: Submitted documents
Open Records Letter No. 97-1974 (1974)

cc: Mr. Randle B. Moore
P.O. Box 500302
San Antonio, Texas 78280-6302
(w/o - Submitted documents, w/- Open Records Letter No. 97-1974 (1974))