



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 17, 1998

Ms. Bertha Bailey Whatley  
General Counsel - Fort Worth ISD  
100 N. University Drive  
Fort Worth, Texas 76107

OR98-2222

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118152.

The Fort Worth Independent School District (the "district") received a request for information, in which the requestor states "I signed a waiver so that I could not view my records. I would now like to view the recommendations from previous references."<sup>1</sup> In response to the request, you have submitted the information which you contend is responsive. You ask whether the requested information relating to the requestor's application for employment with the district may be withheld based on a waiver signed by the requestor, which purported to take away the requestor's right of access to background reference information. You also argue that the submitted information is excepted from required public disclosure pursuant to section 552.101 of the Government Code. We have considered the issues you have raised and have reviewed the documents at issue.

We first consider whether an agreement between the district and the requestor may prohibit the requestor from gaining access to information under the act. Based on your representation, the waiver agreement to which you refer us is signed by all applicants for positions with the district. This agreement purports to take away an applicant's right of access to background reference information. *See* Open Records Decision Nos. 283 (1981) (individual who signs agreement providing that references will remain confidential cannot waive public's right to disclosure), 114 (1975) (governmental body generally cannot enter into agreements to keep information confidential); *see also* Gov't Code § 552.007 (selective disclosure is specifically prohibited by act). This office has on numerous occasions held that a governmental body may not enter into agreements to keep information confidential except

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<sup>1</sup>We note that section 552.023 grants an individual or an individual's representative access to information that is otherwise excepted from required public disclosure based on a law that protects that individual's privacy interests. *See* Open Records Decision No. 587 (1991).

where specifically authorized to do so by statute. Open Records Decision Nos. 444 (1986), 437 (1986), 425 (1985), 414 (1984). As we are not aware of any statute that specifically authorizes the waiver, we conclude that you may not withhold the requested information on the basis of the waiver agreement.

We next consider your assertion that the submitted information may be protected by 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.” However, the district has not presented a statutory or other legal authority which deems this information confidential by law. This section also encompasses common-law privacy and 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). 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 at 1 (1992). After reviewing the submitted material, we do not believe that any of the information is protected by common-law privacy. *See* Open Records Decision No. 455 (1987). Therefore, section 552.101 does not except the requested information from required public disclosure.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/mjc

Ref.: ID# 118152

Enclosures: Submitted documents

cc: Ms. Judith A. Bingham  
517 N. Walnut Creek Dr.  
Mansfield, TX 76063  
(w/o enclosures)