



February 24, 1999

Mr. John A. Kazen
Kazen, Meurer & Perez
P.O. Box 6237
Laredo, Texas 78040

OR99-0545

Dear Mr. Kazen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123911.

The Laredo Independent School District (the “district”) received a request for a particular grievance filed with the district in which the requestor is named. You seek to withhold the requested information under sections 552.101 and 552.102.

Section 552.101 requires withholding “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Section 552.101 also embraces constitutional privacy. *See Industrial Found.*, 540 S.W.2d at 678. The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional “zones of privacy” described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These “zones” include matters related to marriage, procreation, contraception, family relationships, and child rearing and education and are clearly inapplicable here.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual’s privacy interests against the public’s need to know information of public concern. Although such a test might appear more protective of privacy interests than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common-law; the material must

concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)).

Section 552.102(a) protects

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. See Open Records Decision No. 336 (1982); see also Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

We note that public employee privacy protections are quite narrow because of the public interest in disclosure of information regarding public employees' work-related conduct. See Open Records Decision Nos. 269 (1981), 169 (1977). Having examined the information at issue, we conclude that it is not protected by the privacy aspect of section 552.101 or by section 552.102. Therefore you must release the requested information.

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 questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 123911

Enclosures: Submitted documents

cc: Ms. Maria Sanchez
3409 Weeping Willow
Laredo, Texas 78043
(w/o enclosures)