



April 23, 1999

Mr. Jeffrey J. Horner
Bracewell & Patterson, L.L.P.
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR99-1094

Dear Mr. Horner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123695.

The Deer Park Independent School District (the "district"), which you represent, received a request for "a copy of Ernest Duane Davis' personnel file for the time period of Jan. 1990 - June 1990." You inform us that the district has already provided "most of the personnel file" to the requestor. You contend that the remaining requested documents are excepted from disclosure pursuant to sections 552.026, 552.102, and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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 protects information in personnel files 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 to privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 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. We have consistently held that the public has a legitimate interest in the job performance of public employees. *See* Open Records Decision Nos. 473 (1987), 470 (1987). Because the documents at issue concern the on-the-job misconduct of a public employee, the public has a legitimate interest in these documents and they are not protected by the common-law right to privacy. Therefore, the district may not withhold these documents from disclosure under section 552.102.

You also claim that the documents are protected from disclosure by sections 552.026 and 552.114. 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 of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, 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 as to that exception. In this instance, however, you have submitted to this office documents containing student names.

"Education records" under FERPA are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). Because the submitted documents contain information directly related to students, the documents are education records under FERPA. Before releasing these documents to the public, FERPA requires the district to delete information from the documents to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). We have marked the information in the documents that appears to identify students. This identifying information is deemed confidential under FERPA and must be withheld from disclosure. The remaining information in these documents must be released 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.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 123695

encl. Submitted documents

cc: Mr. C. R. Cooper
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(w/o enclosures)