



July 2, 1999

Mr. Ted M. Kerr
Kerr & Ward, L.L.P.
500 West Texas, Suite 1310
Midland, Texas 79701-4289

OR99-1854

Dear Mr. Kerr:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125576.

The Midland Independent School District (the "district") received a request for information pertaining to an investigation that the Texas Education Agency ("TEA") requested that the district conduct concerning possible TAAS tampering by the district's teachers. You claim that the information is excepted from disclosure under sections 552.102 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act.¹ Section 552.101 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). Therefore, 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. We have reviewed the submitted information and conclude that it does not contain any private information. The information concerns a

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

teacher's work performance and is related to the teacher's job; therefore, there is a legitimate public interest in the information. You argue that there is no "public right or interest" in the information because "there is not any corroborating evidence that would indicate that the employee engaged in any inappropriate conduct." The truth or falsity of information is not relevant under the Public Information Act. See *Roviaro v. United States*, 353 U.S. 53, 59 (1957) (false-light privacy is not actionable tort in Texas).

You argue that the district is not "required . . . to furnish the results of an investigation until the investigation has been completed." We disagree. Section 552.022(1) merely states that a completed investigation made for or by a governmental body is public information. Section 552.002 provides that "public information" means information that is collected or maintained by a governmental body in connection with the transaction of official business. The information here is maintained by the district in connection with the transaction of official business. Therefore, it is public information that is subject to public disclosure under the Public Information Act. *City of Garland v. Dallas Morning News*, 969 S.W.2d 548, 553-54 (Tex. App.--Dallas 1998, pet. granted).

Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5.

The submitted records consist of intraagency and interagency memoranda. When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. See Open Records Decision No. 561 at 9 (1990). After reviewing the submitted records, we conclude that the interagency records relate to the district's policymaking functions, and that the district and the TEA share a privity of interest and common deliberative process with regard to the policy matter at issue. We have marked the information in the interagency and intraagency memoranda that you may withhold under section 552.111. The remaining information is factual information that is not excepted by section 552.111 and must be released.

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is fluid and cursive, with the first name "Yen" and last name "Le" clearly distinguishable.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 125576

Encl.: Marked documents

cc: Mr. Daniel Arp
Staff Writer
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(w/o enclosures)