



July 13, 1999

Mr. K. Randolph Evans
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
Renaissance Plaza, Suite 800
70 N.E. Loop 410
San Antonio, Texas 78246-0606

OR99-1942

Dear Mr. Evans:

You have asked whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 125849

The Uvalde Independent School District (the "district"), which you represent, received a request for "the complaints of two Uvalde CISD employees, past or present, whose cases are pending before the Equal Employment Opportunity Commission and any other relevant information." In response to the request, you submit to this office for review the information which you assert is responsive.¹ You contend that the submitted records are excepted from required public disclosure by sections 552.101 and 552.102 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

Section 552.101 requires withholding information made confidential by constitutional or statutory law 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 protection. *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

¹You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

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.

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)). In our opinion, none of the submitted information is protected by common-law or constitutional privacy in conjunction with section 552.101.

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 Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref’d n.r.e.); Open Records Decision Nos. 470 (1987), 455 (1987) (public employee’s job performance is not generally protected by right of privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Thus, we do not believe that any of the submitted information is protected under section 552.102 either.

Finally, we address your assertion that the requested information is confidential by statute. Section 552.101 excepts from disclosure information made confidential by statute. You

assert that charges filed and "any information" with the Equal Employment Opportunity Commission (the "Commission") are confidential pursuant to sections 2000e-5(b) and 2000e-8(e) of title 42 of the United States Code. These provisions apply to information in the possession of the Commission. They do not apply to information the district maintains. Based on the preceding analysis, we conclude that the submitted information may not be withheld pursuant to the claimed exceptions.

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,

A large, stylized handwritten signature in black ink that reads "Sam Haddad". The signature is written over the typed name "Sam Haddad".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref: ID# 125849

encl. Submitted documents

cc: Mr. Bill Cockrell
Uvalde Leader-News
P.O. Drawer 740
Uvalde, Texas 78801
(w/o enclosures)