



August 10, 1999

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OR99-2242

Dear Mr. Hairston:

You ask 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# 126614.

The Paris Independent School District (the “district”), which you represent, received a request for the written reprimand issued to a specific teacher. You claim that the requested document is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and have reviewed the document at issue.

You first argue that the requested document is confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, “Any document evaluating the performance of a teacher or administrator is confidential.” This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). After careful review, we conclude that the submitted document may not be withheld under section 21.355 of the Education Code.

You also argue that the requested document is excepted from disclosure by section 552.102. 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 for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Thus, information must 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).

The information at issue pertains solely to an employee's actions while acting as a public servant and the conditions for continued employment, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Consequently, the district may not withhold the requested document pursuant to common-law privacy.

Section 552.101 also excepts from disclosure information protected by constitutional privacy. 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) and is 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 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). As noted above, the information you seek to withhold does not concern the intimate aspects of an individual's private affairs, but rather directly pertains to the teacher's job performance. Therefore, the district may not withhold any of the requested information under constitutional privacy.

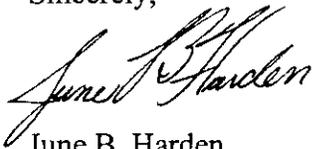
Finally, you express concern that the release of the requested information would violate the teacher's liberty interests under the Fourteenth Amendment of the United States Constitution. We note, however, that

[t]o establish a liberty interest, an employee must demonstrate that his governmental employer has brought *false charges* against him that might seriously damage his standing and associations in his community, or that impose a stigma or other disability that forecloses freedom to take advantage of other employment opportunities. *Board of Regents v. Roth*, 408 U.S. 564 (1972).

*Wells v. Hico Indep. Sch. Dist.*, 736 F.2d 243, 256 (5th Cir. 1984) (emphasis added; parallel citations omitted). It is not apparent to us, however, that the requested information constitutes a "false charge." Consequently, the release of this information would not implicate the teacher's Fourteenth Amendment interests.<sup>1</sup> Furthermore, even if it did, we are aware of no authority for the proposition that information may be withheld under section 552.101 on this basis. Accordingly, the requested information, with the student's name redacted, 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,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/ch

Ref: ID# 126614

Encl. Submitted documents

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<sup>1</sup>We further note that information regarding public employees may not be withheld under section 552.101 merely because the information is false. See Open Records Decision No. 579 (1990).