



September 22, 1999

Mr. Douglas A. Poneck
Escamilla & Poneck, Inc.
1200 South Texas Building
603 Navarro Street
San Antonio, Texas 78205-1826

OR99-2661

Dear Mr. Poneck:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127536.

The Edgewood Independent School District (the “district”), which you represent, received a request for a copy of an independent evaluation report prepared in response to a grievance filed against a named employee. You have supplied the responsive information to this office for review. You claim that the subject information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common-law right to privacy. The common-law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.102 of the Government Code protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref’d n.r.e.). The common-law right of privacy does not protect facts about a public employee’s misconduct

on the job or complaints made about his performance. *See* Open Records Decision Nos. 438 (1986), 219 (1978), 230 (1979). In this case, the report relates to the job performance of a public employee. As the public has a legitimate interest in such information, it is not excepted by common-law privacy under either section 552.101 or 552.101 of the Government Code. The information 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 upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 127536

Encl. Submitted documents

cc: Ms. Rosa Rosales
National Association of Public Employees
3006 Guadalupe Street
San Antonio, Texas 78207
(w/o enclosures)