



July 26, 2000

Ms. Laura Enriquez-Guerra
Records Management Specialist
Ysleta Independent School District
9600 Sims Drive
El Paso, Texas 79925-7225

OR2000-2838

Dear Ms. Enriquez-Guerra:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137408.

The Ysleta Independent School District (the "district") received a request for records of teachers who were reprimanded for unauthorized grade alteration during the last ten years. You claim that the responsive information 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 information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is protected by the common law right of privacy. Gov't Code § 552.101; *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under section 552.101 in conjunction with common law privacy 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. *Industrial Found.*, 540 S.W.2d at 685. The matters considered to be intimate and embarrassing by the Texas Supreme Court in *Industrial Found.* include sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimacy, psychiatric treatment, attempted suicide, and injuries to reproductive organs. *Id.* at 683. 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). The protection that section 552.102(a) affords to personnel records corresponds to that which section 552.101 provides to information made confidential under common law privacy and the test in *Industrial Foundation*. See

Hubert v. Harte-Hanks Tex. Newspapers, Inc., 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Employee privacy under section 552.102 is narrower than common law privacy under section 552.101, however, because of the greater legitimate public interest in matters involving public employees. See, e.g., Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Generally, section 552.102 protects employee information from disclosure only when the information in question reveals "intimate details of a highly personal nature." See Open Records Decision No. 423 at 2 (1984). Based on your arguments and our review of the submitted information, we conclude that it is not excepted from disclosure under section 552.102(a) of the Government Code. See also Open Records Decision Nos. 471 at 3-4 (1987), 441 at 2-4 (1986). Therefore, the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

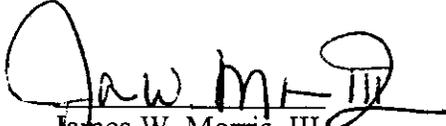
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jaw Morris III". The signature is written in a cursive style with a large initial "J" and a stylized "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 137408

Encl. Submitted documents

cc: Mr. Gustavo Reveles
El Paso Times
P.O. Box 20
El Paso, Texas 79901-1470
(w/o enclosures)