



August 31, 2000

Mr. Humberto Trevino
Charter School Coordinator
Student Alternatives Program, Inc.
Gateway Academy
P.O. Box 3129
Laredo, Texas 78043-3129

OR2000-3382

Dear Mr. Trevino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138899.

Gateway Academy (“Gateway”) received a request for information pertaining to its personnel for the five-year period ending June 19, 2000. Specifically, the requestor seeks: 1) the full names, dates of birth, and addresses of all employees who were terminated; 2) the full names, dates of birth, and addresses of all employees who resigned; 3) the reasons for the employees’ terminations or resignations; 4) whether each of the terminated or resigned employees was eligible for rehire; 5) the dates of the employees’ hiring and firing or resignation; 6) the positions held by the employees; and 7) the salaries of the employees. You state that Gateway intends to release information responsive to all of the request items except for request item number 3, and only dating back to November 1998. You claim information predating November 1998 is not subject to the Public Information Act (the “Act”). Moreover, you claim that to the extent information responsive to request item number 3 is subject to the Act, meaning information dating from November 1998 to June 19, 2000, portions are 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 representative sample of the information at issue.¹

¹We assume that the “representative sample” of records submitted to this office is truly representative of all of the information at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

First, we address your concern that information responsive to the request that predates November 1998 is not subject to the Act. "Public information" subject to the Act is defined in pertinent as:

information that is collected, assembled, or maintained . . . in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code §552.002(a). A "governmental body" is defined in pertinent part as, "the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds. Gov't Code § 552.0003(1)(A)(x). You explain that Gateway is a subsidiary of the Student Alternatives Program, Inc. ("SAPI"), a Texas nonprofit corporation. You further state in November 1998, SAPI became designated as a charter school and has therefore been receiving funding from the Texas Education Agency ever since. Consequently, SAPI and Gateway have been governmental bodies for the purposes of the Act only since November 1998. We agree that because Gateway has only been a governmental body under the Act since November 1998, its records predating November 1998 do not constitute public information under the Act. Accordingly, we find that Gateway has no obligation under the Act in regard to information responsive to the request that predates November 1998.

We now turn to the information at issue: information dating from November 1998 to June 19, 2000 regarding the reasons for employees' terminations or resignations. You claim that this information is excepted from required public disclosure under sections 552.101 and 552.102.² Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of 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 Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). This office has consistently found that there is a legitimate public interest in the work behavior of public employees and how they perform job functions. Open Records

²We note that you do not explain how either section 552.101 or 552.102 applies to the requested information. *See* Gov't Code § 552.301(e)(1)(A). However, because it is implied that the privacy interests of third parties are at stake, we will consider whether section 552.101 or 552.102 makes the information at issue confidential. *See* Open Records Decision No. 586 (1991).

Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 (1983) (employee performance audit not protected by privacy), 284 (1981) (letters of recommendation not protected by privacy).

You have not explained, and we do not see, how the indicated information contained in the submitted representative sample is excepted under common law privacy as encompassed by sections 552.101 and 552.102. Therefore, we find that Gateway must release the information responsive to request item number 3 to the extent it does not predate November 1998.

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.

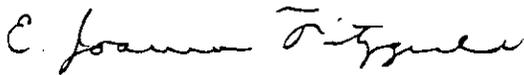
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 138899

Encl. Submitted documents

cc: Mr. Kevin Howard
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(w/o enclosures)