



June 7, 2001

Dr. Pascal D. Forgione, Jr., Ph. D.
Superintendent
Austin Independent School District
1111 West 6th Street
Austin, Texas 78703-5300

OR2001-2373

Dear Dr. Forgione:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148013.

The Austin Independent School District (the “district”) received a written request for the “results of a recent survey of district employees at Kealing Junior High School.” You state that the district has released to the requestor the summary of the survey except for certain information that identifies particular district employees. You contend that the information at issue is excepted from required public disclosure pursuant section 552.101 of the Government Code in conjunction with the common law right of privacy. In the alternative, you suggest that the information may be deemed confidential under section 21.355 of the Education Code.

Although you raise section 552.101 of the Government Code in conjunction with the common law right of privacy, we believe the more appropriate exception to raise in this instance is section 552.102(a) of the Government Code, which 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), 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.).

The information at issue reflects the teachers’ opinions of two employees’ job performances. Despite the fact that the respective employees may deem this information as highly intimate or embarrassing, the information is nevertheless of legitimate public concern. *See* Open

Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Because this information is not of a private nature, it does not come under the protection of section 552.102.

We next address the applicability of section 21.355 of the Education Code to the information at issue. Section 21.355 of the Education Code provides, "A document evaluating the performance of a teacher or administrator is confidential." This office 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 reviewing the information at issue, we do not believe that the information you have highlighted constitutes an evaluation for purposes of section 21.355. Although the information you have highlighted reflects highly subjective comments about the principal and the employee, these comments cannot be categorized or perceived of as an evaluation of the performance of the principal or any other district teacher or administrator. Thus, we conclude that the information is not made confidential under section 21.355 of the Education Code.

Because the information you have highlighted is not excepted from public disclosure pursuant to either section 552.101 or 552.102 of the Government Code, we conclude that this information must be released to the requestor. 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/RWP/seg

Ref: ID# 148118

Enc: Submitted documents

c: Mr. Jason Spencer, Reporter
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