



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 10, 2004

Ms. Mia M. Martin  
General Counsel  
Richardson Independent School District  
400 S. Greenville Avenue  
Richardson, Texas 75081-4198

OR2004-3807

Dear Ms. Martin:

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# 201090.

The Richardson Independent School District (the "district") received a request for the complete personnel file of a named district employee. You state and submit documentation showing that the district will release most of the requested information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.107 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected by other statutes. 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). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* You state that the principal in question is a certified

educator. You also state that portions of the submitted information consist of documents evaluating the performance of this principal. We have reviewed the submitted information and find that some of it evaluates the "performance of a teacher or administrator." Therefore, we conclude that the information we have marked is confidential under section 21.355 of the Education Code, and must be withheld under section 552.101 of the Government Code.

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test for determining whether information is excepted under section 552.102 is the same as the one used to decide whether it is protected by the common-law right to privacy under section 552.101.<sup>1</sup> *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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 type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review of the remaining submitted letter and memorandum, we conclude that these documents consist almost entirely of information regarding the employment of the individual in question and, thus, are of legitimate concern to the public. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). However, we have marked a small amount of information within the letter that is confidential under common-law privacy. The memorandum and the remaining portions of the letter are not confidential under common-law privacy and may not be withheld under section 552.102(a) of the Government Code.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records

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<sup>1</sup>Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy.

Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state that, in this case, prior to the district's receipt of the request, the named district employee made a request for confidentiality under section 552.117. Therefore, the district must withhold the information we have marked in the letter pursuant to section 552.117.

Finally, although you also raise section 552.107 as an exception to disclosure, you make no arguments regarding its applicability to the remaining information and we have no basis to determine that it applies. Consequently, we find that the district has waived its claim under section 552.107 and we accordingly do not address the applicability of section 552.107 to the remaining information. *See* Gov't Code §§ 552.301(e)(1)(A) (governmental body seeking to withhold information pursuant to an exception under Act must provide written comments stating reasons why stated exceptions apply that would allow information to be withheld), .302. As such, with the exception of the small amount of information that we have marked, the letter and memorandum must be released to the requestor.

In summary, the information we have marked must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The small amount of information we have marked in the letter must be withheld under sections 552.102(a) and 552.117 of the Government Code. The remainder of the letter and the memorandum 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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/krl

Ref: ID# 201090

Enc. Submitted documents

c: Ms. Kristine Hughes  
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(w/o enclosures)