



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 17, 2004

Ms. Bridget Robinson  
Walsh, Anderson, Brown,  
Schulze & Aldridge, P.C.  
P. O. Box 2156  
Austin, Texas 78768

OR2004-9757

Dear Ms. Robinson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213293.

The Brookeland Independent School District (the "district"), which you represent, received a request for (1) documents relating to the district's investigation of a specified matter involving a named district employee; (2) correspondence between the district and its district executive committee, the University Interscholastic League, any law enforcement agency, and the State Board for Educator Certification regarding this matter; and (3) the personnel file of the named district employee. You state that you have released some responsive information. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.<sup>1</sup> 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." Gov't Code § 552.101. This section encompasses information other statutes make confidential. 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

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<sup>1</sup>In correspondence with this office dated September 27, 2004, you state that the requestor withdrew his request for certain documents. Accordingly, this ruling does not address those documents.

Records Decision No. 643 (1996). In that opinion, this office determined that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is serving as an administrator at the time of the evaluation. *Id.* Similarly, 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. *See id.*

The information at issue constitutes written reprimands and documentation of a reprimand. After careful consideration of your arguments and our review of the information at issue, we find this information relates to allegations of misconduct on the part of an employee of the district and does not concern evaluations as that term is commonly understood. You argue that the Commissioner of Education has ruled that written reprimands are evaluations for the purposes of section 21.355. *Tave v. Dallas Indep. Sch. Dist.*, Dkt. No. 067-R2-501 (Comm's Educ. 2001). However, we disagree with the Commissioner's ruling in *Tave*. Thus, we find that the submitted information is not confidential under section 21.355 and is not excepted from disclosure under section 552.101 on that basis.

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 of the Government Code.<sup>2</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). 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. 540 S.W.2d 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. *Industrial Foundation*, 540 S.W.2d at 683. Upon review of the information at issue, we conclude that it consists solely of information regarding the employment of the individual in question and, thus, is 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,

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<sup>2</sup>Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy.

or resignation of public employees). Therefore, the information at issue is not confidential under common-law privacy and may not be withheld under section 552.102(a) of the Government Code. Accordingly, we conclude the information at issue 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,

A handwritten signature in black ink, appearing to read "Sarah Swanson", with a long horizontal flourish extending to the right.

Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/krl

Ref: ID# 213293

Enc. Submitted documents

c: Mr. Danny Robins  
Ft. Worth Star Telegram  
400 West 7<sup>th</sup> Street  
Ft. Worth, Texas 76102  
(w/o enclosures)