



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2005

Ms. Susan K. Bohn
Bracewell & Giuliani, L.L.P.
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2005-08526

Dear Ms. Bohn:

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# 232545.

The Humble Independent School District (the "district"), which you represent, received a request for copies of incident reports from a specified time period. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by interested parties. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that in Open Records Letter No. 2005-5213 (2005) this office ruled on the public availability of information responsive to this request. The offense reports that are presently at issue were not submitted at that time because the district recently "discovered . . . one of the documents that is responsive to the request." Because the district failed to submit the information or seek a decision to withhold the information in response to the original request as required by section 552.301 the information was presumed to be public and the district waived its section 552.108 assertion. *See Gov't Code §§ 552.301, .302; Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); see also Open Records Decision No. 522 (1989) (discretionary exceptions in general).* Thus, this information should have been released in accordance with Open Records Letter No. 2005-2513. When information has previously been released to the public, it may not subsequently be withheld unless it is expressly confidential under other law. *Cf. Gov't Code § 552.007; Open Records Decision No. 518 (1989) (construing statutory predecessor).* Thus, offense report number 11030401 must be released.

We next address your claim that the remaining submitted information is subject to the doctrine of common law privacy. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision” and encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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, we find that the remaining information relates solely to the work conduct of a district employee. We note that the public has a legitimate interest in information concerning the workplace conduct and performance of public employees. *See* Open Records Decision No. 423 (1984). Accordingly, we conclude that none of the remaining information is protected by common law privacy, and it may not be withheld under section 552.101. *See* Open Records Decision Nos. 470 (1987) (public employee’s job performance does not generally constitute his private affairs), 444 (1986) (public has interest in public employee’s qualifications and performance and circumstances of his resignation or termination), 405 (1983) (public has interest in manner in which public employee performs his job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, the district may not withhold any portion of the remaining information at issue under section 552.101 of the Government Code. The district must release the submitted information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 232545

Enc. Submitted documents

c: Ms. Sarah L. Mertins
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(w/o enclosures)