



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2006

Mr. Sal Levatino
Manor Independent School District
1524 South IH-35, Suite 234
Austin, Texas 78704

OR2006-12633

Dear Mr. Levatino:

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# 262969.

The Manor Independent School District (the "district"), which you represent, received a request for "all information regarding the alleged UIL infractions by the Manor High School Athletic Department," and a subsequent request for the "growth plan required [from] the Athletic Director, Offensive Coordinator and Defensive Coordinator." You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us, and provide documentation showing, that the district wishes to withdraw its request for an open records decision with regard to a portion of the submitted information because the requestor has withdrawn his request to the district for such information. Thus, this information, which we have marked, is not responsive to the instant request. Information that is not responsive to this request need not be released. Moreover, we do not address such information in this ruling.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 21.355 of the Education Code. Section 21.355 provides that "a document evaluating the performance of a teacher or administrator is confidential." Educ. Code

¹Although you did not timely raise section 552.101 of the Government Code, this provision constitutes a compelling reason to withhold information, and we will address your arguments under this exception. See Gov't Code §§ 552.301, .302.

§ 21.355. This office has 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). The Third Court of Appeals has also held that a written reprimand constitutes an evaluation for purposes of section 21.355. See *Abbott v. North East Indep. Sch. Dist.*, No. 03-04-00744-CV (Tex. App.—Austin 2006, no pet. h.). This office has determined 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 the evaluation. Open Records Decision No. 643. You contend that some of the submitted information constitutes teacher evaluations for purposes of section 21.355. You also indicate the teachers at issue each hold a certificate under chapter 21 of the Education Code. Upon review, we find that three of the submitted documents constitute evaluations for purposes of section 21.355. This information, which we have marked, must be withheld under section 552.101 of the Government Code. We find, however, that the district has not demonstrated that the remaining information constitutes an evaluation for purposes of section 21.355. Therefore, none of the remaining information may be withheld on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common law privacy. Section 552.102(a) of the Government Code excepts from public disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee’s employment and its terms constitutes information relevant to person’s employment relationship and is part of employee’s personnel file). The privacy analysis under section 552.102(a) is the same as the common law privacy standard under section 552.101. See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.) (addressing statutory predecessor). We will therefore consider the applicability of common law privacy under section 552.101 together with your claim regarding section 552.102.

In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), the Texas Supreme Court held that information is protected by common law privacy if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of a legitimate concern to the public. See *Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. We note that information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common law privacy. See Open Records Decision Nos. 470 (1987) (public employee’s job performance does not generally constitute employee’s private affairs), 455 (1987) (public employee’s job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). We have reviewed the submitted information and find that it pertains to the work conduct of district employees and is of a legitimate public interest. Therefore, none of the submitted

information is confidential under the doctrine of common law privacy, and it may not be withheld under either section 552.101 or section 552.102.

However, we note the submitted information includes a telephone number that may personally belong to a district employee. Section 552.117(a)(1) of the Government Code exempts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under section 552.024 of the Government Code.² We note section 552.117 encompasses a personal cellular telephone number, provided that the cellular service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use).

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 Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) 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. Accordingly, to the extent the telephone number we have marked in the submitted information is the personal cellular telephone number of a district employee who have made a timely election under section 552.024, the telephone number must be withheld under section 552.117. To the extent the telephone number does not belong to a district employee who made a timely election under section 552.024 of the Government Code, it must be released.

In summary, the district must withhold the information we have marked in the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The marked telephone number in the submitted information must be withheld under section 552.117 of the Government Code to the extent the telephone number personally belongs to a district employee who made a timely election under section 552.024 of the Government Code. The remaining submitted information must be released.

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

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 262969

Enc. Submitted documents

c: Mr. Tad Tate
The Manor Messenger
P. O. Box 304
Manor, Texas 78653
(w/o enclosures)