



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 29, 2007

Mr. Miguel A. Saldaña
Law Office of Miguel A. Saldaña
3 North Park Plaza
Brownsville, Texas 78521

OR2007-14088

Dear Mr. Saldaña:

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# 293033.

The Brownsville Independent School District (the "district"), which you represent, received a request for information relating to an investigation of a district employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.111, and 552.116 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 or expressly confidential under other law. Gov't Code § 552.022(a)(1). In this instance, the submitted information constitutes a completed investigation. The district seeks to withhold the information at issue under sections 552.111 and 552.116 of the Government Code. However, these are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 470 at 7 (1987) (statutory predecessor to section 552.111 may be waived); 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, sections 552.111 and 552.116 do not qualify as other laws that make information confidential for the purposes of section 552.022. Thus, the district may not withhold the completed investigation under sections 552.111 and 552.116 of the Government Code. However, you also claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the

Government Code. Sections 552.101 and 552.102 are other law for the purposes of section 552.022. Therefore, we will address your arguments under these exceptions.

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. This section encompasses the common-law right of privacy. Similarly, section 552.102(a) of the Government Code excepts from 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85. Accordingly, we will consider your section 552.101 and section 552.102(a) privacy claims together.

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. Generally, the public has a legitimate interest in information that relates to public employment and public employees. See Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 at 5 (1990) (information in public employee’s resume not protected by constitutional or common-law privacy under statutory predecessors to 552.101 and 552.102). Information that pertains to an employee’s actions as a public servant generally cannot be considered to be beyond the realm of legitimate public interest. See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). The district has failed to demonstrate how the information at issue constitutes highly intimate or embarrassing information of no legitimate public interest for the purposes of common-law privacy, and thus none of it may be withheld on that basis. As you do not raise additional arguments against disclosure, the information at issue 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 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,



Chanita Chantaplin-McLelland
Assistant Attorney General
Open Records Division

CC/jb

Ref: ID# 293033

Enc. Submitted documents

cc: Mr. José Borjón
The Brownsville Herald
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(w/o enclosures)