



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2009

Ms. Merri Schneider-Vogel
Thompson & Horton, L.L.P.
711 Louisiana Street, Suite 2100
Houston, Texas 77002-2746

OR2009-10572

Dear Ms. Schneider-Vogel:

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# 350710.

The Aransas County Independent School District (the "district"), which you represent, received a request for a specified letter. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. You have also notified a third party of the request and of her right to submit arguments to this office as to why the requested information should not be released. Gov't Code § 552.304 (interested party may submit comments stating why the information should or should not be released). We have received comments from the third party. *Id.* We have considered the submitted arguments and reviewed the submitted information.

Initially, the third party states that she believed the submitted information was privileged and she was not aware that "it could be considered 'public information.'" However, information is not made confidential under the Act simply because the party submitting the information anticipates or requests that it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), cert. denied 430 U.S. 931 (1977); *see also* Open Records Decision Nos. 479 (1987) (information is not confidential under the Act simply because party submitting it anticipates or requests that it be kept confidential). Consequently, the submitted information may not be withheld unless it falls within an exception to disclosure.

Both the district and the third party claim that the submitted information, which consists of a letter dealing with concerns over the work conduct of a district employee, is confidential pursuant to 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." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses the doctrine of common-law privacy. Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 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(a).

Common-law privacy protects information 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 legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. We note that this office has found that the public has a legitimate interest in the qualifications and work conduct of employees of governmental bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Having considered the submitted arguments and reviewed the information at issue, we find that the submitted information is a matter of legitimate public interest. Accordingly, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy or section 552.102(a) of the Government Code. As no further exceptions to the disclosure of the submitted information are raised, the submitted information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and

responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eeg

Ref: ID# 350710

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Rebecca Atkins
1009 Redwood Avenue
Rockport, Texas 78382
(w/o enclosures)