



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 16, 2010

Mr. John A. Kazen
Kazen, Meurer & Pérez L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2010-03702

Dear Mr. Kazen:

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# 372860.

The Laredo Independent School District (the "district"), which you represent, received a request for the "Texas Association of School Boards' recommendation for [district] job reclassifications and equity adjustments for [the] 09-10 school year." You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. You inform us, and provide documentation showing, the district notified certain employees of the request for information.¹ See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have received comments from one employee. We have considered the claimed exceptions and reviewed the submitted information.

The district claims the submitted information is excepted from disclosure under section 552.102 of the Government Code based on the common-law right to privacy. The employee who briefed also raised common-law privacy. Section 552.101 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. *Id.* § 552.101. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 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 the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. See *Hubert*, 652 S.W.2d at 550; *Indus. Found.*, 540 S.W.2d at 683-85. In *Industrial Foundation*, the Texas Supreme Court

¹You state the district notified the employees whose names appear in the responsive documents.

stated 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. 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. Generally, however, the public has a legitimate interest in information that relates to public employment and public employees, and information that pertains to an employee's actions as a public servant generally cannot be considered beyond the realm of legitimate public interest. *See* Open Records Decisions 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); 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); *see also* Gov't Code § 552.022(a)(2) (name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of governmental body are public information). Upon review, we find that no portion of the submitted information constitutes highly intimate or embarrassing information of no legitimate concern to the public. Therefore, no portion of the submitted information may be withheld under section 552.101 or section 552.102 on the basis of common-law privacy.

Section 552.101 also encompasses information protected by other statutes, such as section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word "teacher" means a person who is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055, and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. We also determined the word "administrator" in section 21.355 means a person who is required to, and does in fact, hold an administrator's certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You assert the submitted information, which pertains to job reclassification and equity adjustment recommendations from the Texas Association of School Boards, is confidential under section 21.355. Upon review, however, we find you have not demonstrated, nor do the documents reflect, how the submitted information consists of evaluations of teachers or administrators. Accordingly, the district may not withhold any of the submitted information under section 552.101 of the Government in conjunction with section 21.355 of the

Education Code. As you raise no other exceptions to disclosure, the submitted information must be released.

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, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/jb

Ref: ID# 372860

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Julio A. Mendez
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(w/o enclosures)