



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 9, 2010

Mr. Humberto Aguilera  
Escamilla, Poneck & Cruz, LLP  
P.O. Box 200  
San Antonio, Texas 78291

OR2010-10155

Dear Mr. Aguilera:

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# 385985.

The Harlandale Independent School District (the "district"), which you represent, received a request for six categories of information related to a district investigation of a specified reprimand received by the requestor's client, certain district policies, files related to the requestor's client, and a specified Equal Employment Opportunity Commission ("EEOC") complaint filed against the district. You state the district has released some of the responsive information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. You raise the doctrines of common-law and constitutional privacy, which are encompassed by section 552.101, for the information in Exhibit A. Common-law privacy protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. However, determinations under common-law privacy must be made on a case-by-case basis. *See* Open Records Decision No. 373 at 4 (1983). Constitutional privacy consists of two interrelated types of privacy: (1) the right to

make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

The information in Exhibit A pertains directly to the job performance of a former district employee, and the circumstances surrounding that employee's resignation. This office has stated in numerous opinions that the public has a legitimate interest in knowing the reasons for the resignation or dismissal of public employees. Open Records Decision No. 444 at 6 (1986); *see* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). We have also held the public's need to know information related to the work behavior and resignation of a public employee generally outweighs the employee's privacy interests for purposes of constitutional privacy. *Cf.* Open Records Decision Nos. 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom not protected under statutory predecessor to section 552.101 or predecessor to section 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of complaint not protected under either constitutional or common-law right of privacy). Accordingly, we find the submitted information is not confidential pursuant to common-law or constitutional privacy and may not be withheld under section 552.101 of the Government Code. As you raise no other exceptions to disclosure of the submitted information, Exhibit A must be released.<sup>1</sup>

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](http://www.oag.state.tx.us/open/index_orl.php),

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<sup>1</sup>You state the district will redact a former district employee's home address from the submitted information pursuant to section 552.024(c) of the Government Code. Section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, social security number, and family member information of a current or former employee who properly elected to keep this information confidential, provided the governmental body provides the requestor with notice as required by section 552.024(c-2). Gov't Code § 552.024(c).

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,

A handwritten signature in black ink, appearing to read 'Bob Davis', with a long horizontal flourish extending to the right.

Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

Ref: ID# 385985

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)