



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 4, 2016

Ms. Katie Payne
Counsel for Laredo Community College
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2016-22249

Dear Ms. Payne:

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# 629947.

Laredo Community College (the "college"), which you represent, received a request for five specified evaluations pertaining to a named employee. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to three of the five specified evaluations. To the extent any information responsive to these portions of the request existed on the date the college received the request, we assume the college has released it. If the college has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

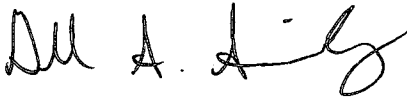
Gov't Code § 552.022(a)(1). The submitted information consists of completed evaluations that are subject to section 552.022(a)(1). The college must release the completed evaluations pursuant to section 552.022(a)(1) unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* You seek to withhold the submitted information under section 552.103 of the Government Code. However, section 552.103 is discretionary in nature and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, the submitted information may not be withheld under section 552.103 of the Government Code. However, as section 552.101 of the Government Code makes information confidential under the Act, we will address your argument under section 552.101 for 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 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), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find you have not demonstrated any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the college must release the submitted information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 629947

Enc. Submitted documents

c: Requestor
(w/o enclosures)