



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 20, 2019

Ms. April R. Philley
Counsel for Lovejoy Independent School District
Eichelbaum, Wardell, Hansen, Powell & Mehl, P.C.
5801 Tennyson Parkway, Suite 360
Plano, Texas 75024

OR2019-13406

Dear Ms. Philley:

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# 766557.

The Lovejoy Independent School District (the "district"), which you represent, received a request for certain information pertaining to a named former district employee for a specified time period. 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. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, in relevant part, "[a] document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under [the Act]." Educ. Code § 21.355(a). The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "it reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). 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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word "administrator" means a

person who is required to and does in fact hold a administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions as an administrator, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

Upon review, we agree Exhibit C consists of an evaluation of an administrator by the district. You state the administrator at issue held the appropriate certificate for the purpose of section 21.355 and was acting as an administrator at the time the evaluation was prepared. Accordingly, the district must withhold Exhibit C under section 552.101 in conjunction with section 21.355.

Section 552.101 of the Government Code also 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This common-law right to privacy protects the identifying information of a complainant in certain situations based on the facts of the case. *See* Open Records Decision No. 394 (1983); *see also* Open Records Decision No. 339 (1982) (concluding common-law privacy protects identifying information of victim of serious sexual offense). Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

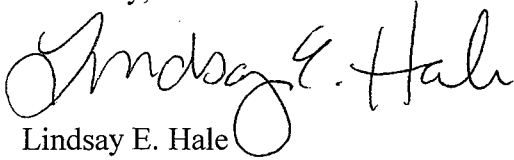
In this instance, although you seek to withhold Exhibit D in its entirety, you have not demonstrated, nor does it otherwise appear, this is a situation in which the information must be withheld in its entirety on the basis of common-law privacy. Upon our review, however, we note portions of the information satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked in Exhibit D under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold the remaining information under section 552.101 on this basis.

In summary, the district must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information we have marked in Exhibit D under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the remaining information in Exhibit D.

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large, looping initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/gw

Ref: ID# 766557

Enc. Submitted documents

c: Requestor
(w/o enclosures)