



April 12, 1999

Mr. Michael J. Currie
Henslee, Fowler, Hepworth & Schwartz
816 North Congress Avenue
800 Frost Bank Building
Austin, Texas 78701-2443

OR99-0988

Dear Mr. Currie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 123756.

The Alief Independent School District (the "district"), which you represent, received an open records request for all records pertaining to reprimands received by four named school bus drivers. You contend the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.102, and 552.117 of the Government Code.

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.)

This office has held that section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." *See* Open Records Decision Nos. 269 (1981), 169 (1977). None of the information you have submitted comports with this standard. The information at issue pertains solely to district employees' actions as public servants, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees)

You also contend that the information at issue is protected by constitutional privacy. The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional “zones of privacy” described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976). These “zones,” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education, are clearly inapplicable here.

The second interest, in nondisclosure or confidentiality, may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual’s privacy interests against the public’s need to know information of public concern. Although such a test might appear more protective of privacy interests than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). As noted above, the records at issue do not concern intimate aspects of individuals’ private affairs, but rather directly pertain to the actions and resulting disciplinary actions of public employees. The district may not withhold any of these records under either constitutional or common-law privacy.

You also seek to withhold the social security numbers of the named bus drivers pursuant to section 552.117 in conjunction with section 552.024 of the Government Code. Section 552.117(1) excepts from disclosure, *inter alia*, the social security numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). If any of the individuals who are the subjects of the open records request made the election prior to the date on which the district received the open records request, the district must withhold the respective employees’ social security numbers pursuant to section 552.117(1). Otherwise, the social security numbers must be released.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.130 of the Government Code because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov’t Code § 552.352.

Section 552.130(a)(1) of the Government Code requires that the district withhold “information [that] relates to . . . a motor vehicle operator’s or driver’s license or permit issued by an agency of this state.” Some of the requested records contain the driver’s license number of district employees. Because this type of information is made confidential under section 552.130(a) of the Government Code, we conclude that the district must withhold the driver’s license numbers pursuant to section 552.130(a)(1).¹ However, except as discussed above, all remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/RWP/nc

Ref.: ID# 123756

Encl.: Submitted documents

cc: Mr. Tony Conners
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(w/o enclosures)

¹We have also marked a small amount of information in “Exhibit 3” that the district must withhold pursuant to the Family Educational Rights and Privacy Act of 1974. 20 U.S.C. § 1232g.