



October 8, 1999

Mr. Victor Rendon
Assistant Superintendent
Administration
Victoria Independent School District
P.O. Box 1759
Victoria, Texas 77902

OR99-2889

Dear Mr. Rendon:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 127133.

The Victoria Independent School District (the "district") received a written request for all documents pertaining to Canine Contraband Detection Services ("CCDS") and a named former district employee. You have not raised any exception to required public disclosure with regard to the requested documents. However, a representative of CCDS has submitted comments to this office pursuant to section 552.305 of the Government Code as to why portions of the requested information must be withheld from the public.

CCDS contends that most of the personnel records of the former district employee are excepted from public disclosure pursuant to common-law privacy. 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" 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.).

Most of the information in the personnel file pertains solely to the former employee's qualifications and actions as a public servant, 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). One document, however, reflects certain of the employee's personal financial decisions that are protected by common-law privacy. *See generally* Open Records Decision No. 600 at 9-12 (1992). The district must withhold this document, which we have marked, pursuant to section 552.102.

We also note that some of the personnel records contain information that reveals the former employee's social security number, home address, telephone number and information that reveals whether the employee has family members. Section 552.117(1) of the Government Code excepts such information from disclosure, but only if the employee requested that this information be kept confidential in accordance with section 552.024 of the Government Code. 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 the employee made the election prior to the date on which the district received the open records request, the district must withhold these types of information pursuant to section 552.117(1). Otherwise, these types of information must be released.

With regard to the CCDS records that are the subject of the request, CCDS first contends that some of the information contained in the Incident Inspection Reports may tend to reveal the identity of a district student and is, therefore, made confidential under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g. Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). It is not clear to this office, and you have not otherwise explained, that the release of the inspection reports would reveal the identities of particular students. *See* Open Records Decision No. 294 (1981) (if information does not identify individual students, but there is relatively small number of students to whom it could be applicable, it may be withheld under FERPA). Consequently, we have no basis on which to conclude that the inspection reports constitute "education records" under FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A) (defining "education records"). We note, however, that some of the reports contain driver's license numbers and the license plate numbers of motor vehicles, which are made confidential under subsections 552.130(a)(1) and 552.130(a)(2), respectively, of the Government Code and, therefore, must be withheld from the public.

CCDS also contends that its "Billing Slips" that it submits to the district constitute confidential trade secret information. Section 552.110 of the Government Code excepts from required public disclosure, among other things, a "trade secret." A "trade secret" "may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it." RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added). *See also Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Open Records Decision Nos. 255 (1980), 232 (1979), 217 (1978). There are six factors to be assessed in determining whether information qualifies as a trade secret.¹ This office must accept a claim that information is excepted as a trade secret if a prima facie case for exemption is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5 (1990). In this instance, we believe that CCDS has made a prima facie case that its schedule of inspections constitutes trade secret information. The district must withhold the portions of the billing slips that show the time and date of inspection; the remaining information in these documents must be released.

Finally, we note that the CCDS records contain a social security number. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 (1994).

It is not apparent to us that the social security number contained in the records at issue was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is therefore confidential under section 405(c)(2)(C)(vii)(I). We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

¹These six factors are

- 1) the extent to which the information is known outside of [the company's] business;
- 2) the extent to which it is known by employees and others involved in [the company's] business;
- 3) the extent of measures taken by [the company] to guard the secrecy of the information;
- 4) the value of the information to [the company] and to [its] competitors;
- 5) the amount of effort or money expended by [the company] in developing this information; and
- 6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Prior to releasing the social security number, the district should ensure that this number was not obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

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# 127133

Encl. Submitted documents

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