



September 11, 2000

Ms. Joan M. Payton  
General Counsel  
Continuum Health Care System Inc.  
260 N. Sam Houston Parkway E Ste. 300  
Houston, Texas 77060

OR2000-3480

Dear Ms. Payton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 139305.

The Texas Serenity Academy (Conroe) and the Texas Serenity Academy (Bayshore), subsidiaries of Continuum Health Care System, Inc. (the "system") each received a request for information. You inform this office that Texas Serenity Academy (Bayshore) has provided the requestor with the requested information in its possession. You contend that some information responsive to this request made to the Texas Serenity Academy (Conroe) is excepted from disclosure. In this request, the requestor seeks the following seven categories of information for the five year period ending June 19, 2000:

1. full names, dates of birth, and addresses of all employees who were terminated;
2. full names, dates of birth, and addresses of all employees who resigned;
3. reason or reasons for employees' termination or resignation;
4. whether employee was eligible for rehire;
5. dates hired and fired or resigned;
6. position held; and
7. salary.

You seek to withhold certain responsive employee addresses, the reason for an employee's termination or resignation, and whether the employee was eligible for rehire, contained in two personnel files. You contend that this information is excepted from public disclosure by sections 552.101, 552.102, and 552.117 of the Government Code.

Government Code section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. This section encompasses the common law right to privacy. Section 552.102 of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Information may be withheld from the public under the common law right of privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). However, because the work behavior of an employee and the conditions for his continued employment are matters of legitimate public interest, the common law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. *See* Open Records Decision Nos. 438 (1986), 219 (1978), 230 (1979). From our review of the submitted materials, we conclude that the responsive information is not excluded under Government Code section 552.101 in conjunction with a right of privacy, or under section 552.102.

Section 552.117 of the Government Code excepts from required public disclosure the home addresses, home telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). You have supplied a form whereby an employee has elected for non-disclosure under section 552.024 of the Government Code. However, that form is not dated. If the employee elected non-disclosure before the date that the request for information was received, the subject information must be withheld. If the employee elected non-disclosure after the request for information was received, the subject information must be released. You must withhold the information which you determine is excepted from disclosure by section 552.117 and must release the remaining responsive information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 139305

Encl Submitted documents

cc: Mr. Kevin Howard  
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(w/o enclosures)