



July 31, 2001

Ms. Leticia D. McGowan
School Attorney
Dallas Public Schools
3700 Ross Avenue, Box 74
Dallas, Texas 75204-5291

OR2001-3321

Dear Ms. McGowan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150061.

The Dallas Independent School District (the "district") received a request for an investigative report involving an employment matter and all affidavits, notes, and written submissions relating to the investigation. You claim that the requested information is excepted from disclosure under sections 552.102 and 552.103 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted. We also received written comments from the requestor. *See Gov't Code § 552.304.*

We first note that the requested information falls within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under 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) (emphasis added). In this instance, the requestor seeks information relating to an investigation. The submitted documents reflect that the district has completed the investigation, and you do not indicate that the investigation is not complete. Therefore, the information relating to the investigation must be released under section 552.022(a)(1), unless it is expressly confidential under other law or protected from disclosure under section 552.108 of the Government Code. Section 552.103, which you raise, is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. As such, section 552.103 is not other law that makes the submitted information confidential for the purposes of section 552.022. *See Dallas Area*

Rapid Transit v. Dallas Morning News, 4 S.W.3d 469, 475-76 (Tex. App.--Dallas 1999, no pet.) (stating that governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (litigation exception does not implicate third-party rights and may be waived by governmental body).

You also raise section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" The privacy that this exception provides to public employees' personnel records corresponds to the protection that section 552.101 provides in conjunction with the common law right to privacy.¹ See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Information must be withheld from the public under section 552.101 in conjunction with common law privacy if the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

You assert that "the results of the investigation, as well as the affidavits[,] would be an invasion of the employee's personal privacy." We note, however, that privacy under section 552.102(a) is restricted to information that reveals "intimate details of a highly personal nature." See Open Records Decision No. 423 at 2 (1984) (explaining that information may not be withheld under section 552.102 if it is of sufficient legitimate public interest, even if person of ordinary sensibilities would object to release on grounds that information is highly intimate or embarrassing); see also Open Records Decision Nos. 405 at 2 (1983) (stating that information relating to manner in which public employee performed his or her job cannot be said to be of minimal public interest), 444 at 5 (1986) (stating that public has legitimate interest in knowing reasons for dismissal, demotion, or promotion of a public employee). Moreover, private information may not be withheld under section 552.102(a) if it relates solely to the requestor. The requestor has a special right of access to such information under section 552.023 of the Government Code.² We have marked the information that the district must withhold from the requestor under section 552.102.³

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests."

³We emphasize that the district should resubmit these same documents and request another decision in the event that it receives a request for this information from another individual who would not have a special right of access to it.

The submitted documents also contain information that the district may be required to withhold under section 552.117 of the Government Code. Section 552.117(1) protects the home address, home telephone number, and social security number of a current or former public employee, as well as information that reveals whether the employee has family members, *if the current or former employee requested that this information be kept confidential under section 552.024 of the Government Code. See Open Records Decision Nos. 622 (1994), 455 (1987).* Section 552.117(1) does not except this information from disclosure, however, if the current or former employee made an election under section 552.024 after the 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. *See Open Records Decision No. 530 at 5 (1989).* We have marked information that the district must withhold under section 552.117(1) if the current or former employee to whom it pertains properly elected to keep the information confidential under section 552.024. We note that the requestor also has a special right of access to her own section 552.117 information under section 552.023.

In the event that these employees did not elect to withhold their social security numbers under section 552.024, these social security numbers may nevertheless be confidential 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 the social security numbers were obtained or are maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See ORD 622 at 2-4.* It is not apparent to this office that any social security number in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. 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 any social security number in the submitted documents was obtained or is maintained pursuant to such a statute and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See Gov't Code §§ 552.007, .352.* Therefore, prior to releasing a social security number, the district should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the requested information is subject to section 552.022(a)(1) of the Government Code and may not be withheld from the requestor unless it is confidential under other law. We have marked the information that must be withheld under section 552.102. We also have marked information that the district may be required to withhold under section 552.117. A social security number may be confidential under section 552.101 in conjunction with federal law. The remaining information must be released to the requestor.

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).

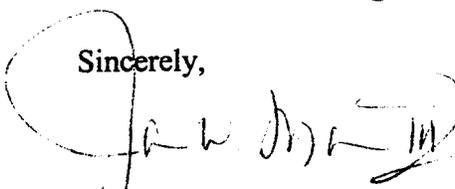
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 150061

Enc: Marked documents

c: Ms. Diane R. Miles
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Dallas, Texas 75219
(w/o enclosures)