



September 27, 2001

Ms. Carrie D. Helmcamp
Henslee, Fowler, Hepworth & Schwartz
800 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR2001-4351

Dear Ms. Helmcamp:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152480.

The Lorena Independent School District (the "district"), which you represent, received a written request for all employment records of a named former district employee.¹ You contend that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In this regard, we first note that section 825.507(a) of the Government Code provides in pertinent part:

(a) Information contained in records that are in the custody of the [Teacher's Retirement System] concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is confidential, and may not be disclosed in a form identifiable with specific information unless:

¹The requestor specifically seeks "any letters regarding reprimands [or] reports of inappropriate behavior" and "any investigations conducted as a result of those reports." We could discern no such records among the materials you submitted to our office.

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator or other person who the executive director determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual if the executive director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(C) a governmental official or employee if the executive director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the executor director determines that the individual will have a reasonable opportunity to contest the subpoena.

The information you submitted to us for review falls within the confidentiality provision set forth in section 825.507 of Government Code. Because none of the stated exceptions apply, we conclude that the district must withhold the Teacher Retirement System records you submitted to our office.

You have also submitted to this office "special instructions" to the district from the employee's physician regarding an injury sustained by the employee. Section 159.002 of the Medical Practice Act (the "MPA"), which is codified at subtitle B of title 3 of the Occupations Code, provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

After reviewing the information at issue, we agree that the "special instructions" constitute a "medical record" for purposes of the MPA. The MPA includes provisions that govern the disclosure of information that it encompasses. *See* Occ. Code §§ 159.003, 159.004, 159.005, 159.006. The district therefore may release this document only in accordance with the MPA.

You also submitted to this office the employee's Employment Eligibility Verification, Form I-9, with an attachment. A Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5). Release of this document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statute. Accordingly, we conclude that the Form I-9 is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Also among the records at issue are the employee's W-4 forms. These forms constitute confidential "tax return information" and as such must be withheld in their entirety pursuant to federal law. *See* 26 U.S.C. § 6103.

You also contend that the employee's social security number is made confidential by federal law. Social security numbers are 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 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* Open Records Decision No. 622 (1994). It is not apparent to us that the employee's social security number 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 employee's social security number was obtained or is maintained pursuant to such a statute and is therefore confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security number, the district should ensure that this number was not obtained and is not maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

You next contend that some of the submitted information is excepted from public disclosure pursuant to section 552.102(a) of the Government Code. Section 552.102(a) excepts from public disclosure "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 Texas Newspapers, Inc.*,

652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.); *see also Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

You contend that information about the employee's injury is protected from public disclosure under common law privacy. In *Industrial Foundation*, the Texas Supreme Court considered intimate and embarrassing information that relates to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also determined that common law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81; and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982). The medical information contained in the records at issue is not the type of information that implicates the employee's privacy interests. Nor is information revealing a public employee's date of birth protected by common law privacy. Attorney General Opinion MW-283 (1980). Accordingly, the employee's date of birth and information revealing the employee's injury must be released.

We note, however, that information revealing a public employee's decision whether to participate in an insurance plan that his or her employer offers (but does not fund), as well as other personal financial decisions, is considered intimate and of no legitimate public interest. *See* Open Records Decision No. 600 (1992). We have marked the personal financial information that the district must withhold on privacy grounds.

Section 552.117(1) of the Government Code requires that the district withhold the home address, home telephone number, social security number, and family information of current or former district employees who request that this information be kept confidential under section 552.024 of the Government Code. You have not provided evidence to this office that the employee elected under section 552.024 not to allow public access to his section 552.117 information prior to the district's receipt of the current records request. The district must redact all section 552.117 information you have highlighted, as well as the additional information that we have marked, only if the employee elected to have this information withheld prior to the district's receipt of the current records request. *See* Open Records Decision No. 530 at 5 (1989) (whether particular information is protected by section 552.117(1) must be determined at time request for it is made).

Finally, some of the documents at issue contain a copy of the employee's driver's license and driver's license number. Section 552.130(a)(1) of the Government Code requires the district to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the district must withhold the

employee's driver's license information pursuant to section 552.130(a)(1) of the Government Code.

In summary, the district must withhold pursuant to section 552.101 of the Government Code the following information: the employee's Teacher Retirement System records, the physician's "special instructions," and the employee's I-9 and W-4 forms. The district must withhold pursuant to section 552.102(a) the information we have marked as coming within the common law right of privacy. The district must withhold the employee's home address, home telephone number, social security number, and family information pursuant to section 552.117(1), but only if the employee timely elected to have this information withheld in accordance with section 552.024 of the Government Code. The employee's social security number may be confidential for purposes of section 552.101 in conjunction with federal law. Finally, the district must withhold the employee's driver's license information pursuant to section 552.130(a)(1). All remaining information in the documents at issue 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).

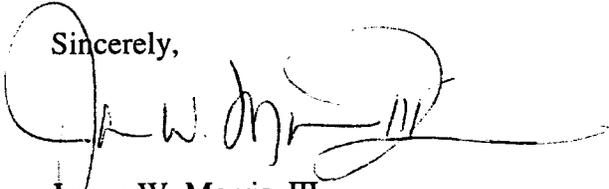
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke extending to the right.

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

JWM/RWP/seg

Ref: ID# 152480

Enc. Submitted documents

c: Mr. Tommy Witherspoon
Staff Writer
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(w/o enclosures)