



July 10, 2002

Mr. John A. Kazen
Kazen, Meurer & Perez, L.L.P.
P.O. Box 6237
Laredo, Texas 78040

OR2002-3723

Dear Mr. Kazen:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 165414.

The Laredo Independent School District (the "LISD"), which you represent, received a request for "all documents possessed by" LISD regarding a named former employee. You have submitted for our review information that is responsive to the request, but you claim no exceptions to disclosure for any of this information. You assert only that the Act does not apply to the request. You argue that the LISD has the discretion to decline to respond to the request because the request was made on behalf of another governmental body, the United Independent School District (the "UISD"). The requestor submitted comment to this office expressing disagreement with this argument. *See Gov't Code § 552.304.* We have considered all of the submitted comments and arguments, and we have reviewed the submitted information.¹

¹We note that in connection with its request for a decision from this office, the LISD redacted portions of the information at issue from the responsive documents prior to submitting the documents to this office for review. We advise that section 552.301 of the Government Code requires a governmental body to submit responsive information to this office in a manner that permits this office to review the information. *See Gov't Code § 552.301(e)(1)(D).* The LISD therefore risks non-compliance with section 552.301 if it fails to submit responsive documents in non-redacted form for this office to review. Such non-compliance can result in a conclusion from this office that the information at issue must be released. *See Gov't Code §§ 552.006, .301, .302.* We accordingly advise that with respect to any future requests from the LISD for an open records decision from this office, the LISD should submit any responsive documents to this office in non-redacted form. *See also id. § 552.3035* (the attorney general may not disclose to the requestor or the public any

We first address your argument that the LISD is not required to respond to the request. In reference to language in Open Records Decision No. 661 (1999) and other authority, you state that “whether a governmental entity may release information to another governmental entity is not a question under the [Act] as the Act is concerned with requested release of information to the *public*.” You thus argue that “LISD maintains the discretion to [decline to] disclose the requested information to the requestor.” We disagree. First, we must point out that the language from Open Records Decision No. 661 on which you rely discusses the *release* of information by one governmental body to another. Yet, you cite this language in support of *withholding* all of the information that was requested by the UISD. As more fully explained below, the LISD does not have the “discretion” to withhold from the UISD information to which any member of the public would be entitled under the Act.

For many years, this office has recognized that it is the public policy of this state that governmental bodies should cooperate with each other in the interest of the efficient and economical administration of statutory duties. *See, e. g.*, Attorney General Opinion H-836 (1976); Open Records Decision No. 655 (1997). *But see* Attorney General Opinions DM-353 at 4 n. 6 (1995) (interagency transfer prohibited where confidentiality statute enumerates specific entities to which release of confidential information is authorized and where receiving agency is not among statute’s enumerated entities), JM-590 (1986) (same); Open Records Decision No. 655 (1997) (same), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In adherence to this policy, this office has acknowledged that information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Attorney General Opinions H-836 (1976), H-242 (1974), M-713 (1970); Open Records Decision Nos. 655 (1997), 414 (1984). Moreover, the release of information by one agency to another agency is not a release to the public for the purposes of section 552.007 of the Government Code, which prohibits the selective public disclosure of information, or for the purposes of section 552.352, which provides criminal penalties for the distribution of confidential information. Open Records Decision No. 516 (1989).

Accordingly, the LISD’s discretion in this matter is not as you characterize it. The LISD has the discretion to *release* the requested information to the UISD — in accordance with the principles of intergovernmental transfer that are referenced above — even though under the Act, portions of the information, as explained below, would be excepted from required disclosure *to the public*. If, as is apparently the case here, the LISD declines to exercise its discretion to release information it could release to this requestor under the principles of intergovernmental transfer, the requestor is nevertheless entitled to the requested information under the Act to the same extent as any member of the public.

information submitted to the attorney general under section 552.301(e)(1)(D)).

However, before we address the extent to which the information at issue *must* be released to the UISD because it is information to which any member of the public would be entitled under the Act, we next address a procedural matter. A governmental body that requests a decision from this office under subchapter G of the Act, among other requirements, must “state the exceptions that apply” to the information at issue and submit to this office “written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]” Gov’t Code § 552.301(b), (e)(1)(A). The LISD has stated no exceptions to disclosure and has submitted no written comments in support of any exceptions to disclosure. It thus appears that the LISD did not request a decision in full compliance with the requirements of section 552.301 of the Government Code.²

If a governmental body fails to request a decision from this office as provided by section 552.301, section 552.302 provides that the “information requested in writing is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” Gov’t Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); Open Records Decision No. 630 (1994). Such a “compelling reason” is demonstrated only where the information at issue is confidential by law such that its distribution is prohibited — *see* Gov’t Code § 552.352 — or where the release of the information implicates third party interests. *See, e.g.*, Open Records Decision No. 150 (1977). We therefore next address the exceptions to disclosure that are applicable to information contained in the submitted responsive documents and that also constitute a “compelling reason” against public disclosure that is sufficient to overcome the section 552.302 release requirement.³

One page of the documents at issue, which we have marked, is a medical record governed by the Medical Practice Act (the “MPA”), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(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.

²Although you state that the LISD requested the present decision from this office under section 552.305, none of the information you have provided this office indicates that the LISD complied with the procedural requirements of section 552.305. In connection with this issue, this office on June 28, 2002 contacted you by telephone and inquired whether one or more notices were sent in accordance with section 552.305. You indicated that you did not send any such notices and that you had no knowledge of the LISD having sent any such notices.

³The Office of the Attorney General ordinarily will not raise or apply exceptions to disclosure that a governmental body or interested party has failed to assert, but because the Act provides for criminal penalties for the distribution of confidential information, the Attorney General will raise a mandatory exception such as section 552.101 of the Government Code. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The information at issue must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We thus conclude that the document we have marked as subject to the MPA may be released only in accordance with the MPA.

One page of the documents at issue consists of an Employment Eligibility Verification, Form I-9, which we have marked. 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); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the Form I-9 is confidential under section 552.101⁴ and may only be released in compliance with the federal laws and regulations governing the employment verification system.⁵

The submitted documents also contain three transcripts from an institution of higher education, which we understand are contained in the personnel file of a professional public school employee. Section 552.102(b) of the Government Code provides that except for the degree obtained and the curriculum, the information contained in these transcripts is excepted from disclosure. *See* Gov't Code § 552.102(b). Accordingly, while the LISD must release the information in these documents that reflects the degree obtained and the curriculum pursued, the LISD must withhold the remaining information in the transcripts.

The submitted documents also contain a copy of a Texas driver's license, which we have marked. This information is subject to required withholding in accordance with

⁴Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

⁵The documents at issue also contains a one page document, which we have marked, that appears to have been an attachment to the Form I-9 even though it was not located adjacent to that form in the submitted file. If this document is such an attachment, it is also confidential in its entirety as provided above. If not, the information in the document is subject to withholding or release as otherwise provided in this decision.

section 552.130, which in pertinent part excepts from disclosure information relating to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1).

Some of the remaining documents at issue contain the social security number, a home address, and/or a home telephone number of the individual named in the request, who you represent is a former employee of the LISD. Section 552.117 excepts this information from disclosure if the former employee requested that it be kept confidential in accordance with section 552.024 of the Government Code. *See* Gov’t Code §§ 552.024, .117(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the LISD may only withhold the information at issue under section 552.117 on behalf of the former employee if he made a request for confidentiality under section 552.024 prior to when the present information request was submitted to the LISD.

The social security numbers in the file may be confidential under federal law. A social security number is excepted from public disclosure under section 552.101 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). The limited information you have provided this office gives us no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the distribution of confidential information. Thus, prior to publicly releasing any social security number information, you should ensure that no such information was obtained or is maintained by the LISD pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, we have marked certain account number information contained on one page of the submitted documents. We find that this information is expressly governed by section 552.136 of the Government Code, which provides that, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. We conclude that in accordance with this provision, the LISD must withhold from the public the account number information we have marked.

In summary, the LISD has discretion to release information to this requestor in accordance with the principles of intergovernmental transfer discussed above. If the LISD chooses not to exercise that discretion, the requested information is nevertheless subject to release to this requestor under the Act to the same extent as any member of the public. In that case, we conclude that the information described above is excepted from required public disclosure as explained above, but that all of the remaining information that is responsive to the request must be released.

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).

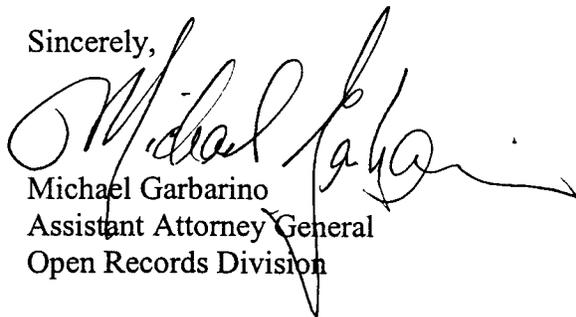
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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 Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 165414

Enc. Submitted documents

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