



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2003

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 South Greenville Avenue
Richardson, Texas 75081-4198

OR2003-9363

Dear Ms. Martin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193379.

The Richardson Independent School District (the "district") received a request for (1) "all forms and letters requesting records and information from [the district] under the Texas Public Information Act" during a specified time interval and (2) "the school district's records department's responses to those requests[.]" You inform us that the district has released some of the requested information.¹ You claim that other responsive information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.137 of the Government

¹We note that the district is correct in assuming that the name and address of a person who requests public information are subject to public disclosure on request. *Cf.* Open Records Decision No. 459 (1987) (attorney general treats letters requesting open records rulings as being generally available to public).

Code.² We have considered the exceptions you claim and have reviewed the information you submitted.³

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 protects information that is deemed to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). You have not directed our attention to any law, and we are not otherwise aware of any law, under which any of the submitted information is deemed to be confidential for purposes of section 552.101. We therefore conclude that you have not demonstrated that any of the submitted information is excepted from disclosure under section 552.101 of the Government Code.

You also raise section 552.102. 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[.]" This exception is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The test of whether information is private under section 552.102(a) is the same as the test for common-law privacy under section 552.101. *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.). Information must be withheld from the public under the common-law right to privacy when 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). Common-law privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540

²You state that you do request a decision with regard to responsive student information. We note that in Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure information that is protected by the federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"), and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995).

³This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

S.W.2d at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private). You have not demonstrated that any of the submitted information is private under section 552.102(a).

Section 552.102(b) excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” You have not demonstrated that any of the submitted information is excepted from disclosure under section 552.102(b).

Next, we address your claim under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the district’s receipt of this request for information. The district may not withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who did not make a timely election of confidentiality under section 552.024.

You inform us that the submitted information contains the home addresses and telephone numbers of employees who previously notified the district that they do not want that information released. We note, however, that an individual’s personal post office box number is not a “home address” under section 552.117 and therefore may not be withheld under this exception. *See* Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history of Gov’t Code § 552.117(a)(1) makes clear that its purpose is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality). We have marked the information that the district must withhold under section 552.117.

You also seek to withhold e-mail addresses contained in the submitted information under section 552.137 of the Government Code. As amended by the 78th Legislature, section 552.137 provides as follows:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78th Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137).⁴ Thus, section 552.137 excepts from public disclosure certain personal e-mail addresses that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail

⁴We note that former section 552.136 of the Government Code, which also related to the confidentiality of certain e-mail addresses, has been repealed as being duplicative of section 552.137. See Act of May 21, 2003, 78th Leg., R.S., ch. 1276, § 9.013, 2003 Tex. Sess. Law Serv. 4158, 4218.

address that a governmental entity maintains for one of its officials or employees. We have marked the submitted e-mail addresses that are confidential under section 552.137(a). The district must withhold the marked e-mail addresses under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure.

In summary: (1) the district must withhold the marked information that is excepted from disclosure under section 552.117 of the Government Code; and (2) the district must withhold the marked e-mail addresses under section 552.137, unless the individual to whom a particular e-mail address belongs has affirmatively consented to its public disclosure. The rest of the submitted information 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).

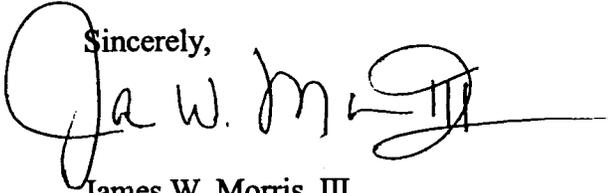
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

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

JWM/sdk

Ref: ID# 193379

Enc: Submitted documents

c: Ms. Kristine Hughes
Richardson Morning News
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(w/o enclosures)