



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 9, 2007

Ms. Ylise Janssen
Austin Independent School District
Office of the General Counsel
1111 West Sixth Street
Austin, Texas 78703-5399

OR2007-05581

Dear Ms. Janssen:

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# 278011.

The Austin Independent School District (the "district") received a request for "[a]ny and all documentation regarding complaints against [a named individual]" from the named individual's representative. You state you have released most of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating 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. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public

disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, information concerning domestic violence generally does not come within the scope of common-law privacy. Open Records Decision No. 611 (1992) (“An assault by one family member on another is a crime, not a family matter normally considered private”).

We agree that a portion of Exhibit B must be withheld under common-law privacy. We have marked the information that the district must withhold under sections 552.101 in conjunction with common-law privacy. We conclude that none of the remaining information is confidential under common-law privacy. *See also* Open Records Decision Nos. 405 at 2 (1983) (manner in which public employee performed his or her job cannot be said to be of minimal public interest), 444 at 4 (1986) (public employee’s personnel file information will generally be available to public regardless of whether it is highly intimate or embarrassing), 470 at 4 (1987) (public employee’s job performance does not generally constitute private affairs), 473 at 3 (1987) (fact that public employee receives less than perfect or even very bad evaluation not protected by common-law privacy), 542 at 5 (1990) (information regarding public employee’s qualifications is of legitimate concern to public).

We note that section 552.117 of the Government Code may be applicable to some of the remaining information.¹ Section 552.117(a)(1) of the Government Code provides that information is excepted from disclosure if it relates to a current or former employee’s home address, home telephone number, social security number, or reveals whether the employee has family members. *See* Gov’t Code § 552.117(a)(1). The district is required to withhold this information if the employee timely requested that this information be kept confidential under section 552.024 of the Government Code. *See* Open Records Decision Nos. 622 (1994), 455 (1987); *see generally* Open Records Decision No. 530 (1989) (stating that whether particular piece of information is public must be determined at time request for it is made). As the representative of the named individual, the requestor has a special right of access to his client’s personal information.² *See* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person’s agent on

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²Should the district receive another request for this same information from a person who would not have a right of access to it, the district should resubmit this same information and request another decision. *See* Gov’t Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

grounds that information is considered confidential by privacy principles). It is unclear whether the remaining employee at issue elected to withhold personal information in accordance with section 552.024. Accordingly, we have marked the information that must be withheld under section 552.117(a)(1) if the district received the proper election under section 552.024. If the district did not receive the proper election, this information must be released.

Section 552.135 of the Government Code provides in part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under this exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.301(e)(1)(A), .135(a). You state that Exhibit B reveals the identity of an employee of the district who reported possible violations of specified federal laws. Based on your representations and our review of the information in question, we conclude that the district must withhold the identity of the individual who made the report at issue, which we have marked in Exhibit B under section 552.135 of the Government Code. However, the district has failed to demonstrate how the remaining information in Exhibits B reveals the identity of an informer for section 552.135 purposes. Accordingly, none of the remaining information in Exhibit B may be withheld on this basis.

In summary, the district must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the information we have marked pursuant to section 552.117(a)(1) if the district received the proper election under section 552.024 of the Government Code. The district must withhold the identifying information we have marked pursuant to section 552.135 of the Government Code. The remaining 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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 cursive script that reads "Jordan Johnson".

Jordan Johnson
Assistant Attorney General
Open Records Division

JJ/eb

Ref: ID# 278011

Enc. Submitted documents

c: Mr. Bruce Banner
Ylise Janssen
Austin Independent School District
Office of the General Counsel
1111 West Sixth Street
Austin, Texas 78703-5399
(w/o enclosures)