



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 4, 2008

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204-5491

OR2008-01585

Dear Ms. McGowan:

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# 301277.

The Dallas Independent School District (the "district") received a request for information pertaining to a specified district investigation. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.102, 552.114, 552.117, 552.1175, 552.130, 552.135, 552.136, and 552.137 of the Government Code.<sup>1</sup> 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. Section 552.101 encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy [.]" *Id.* § 552.102(a). Section 552.102 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

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<sup>1</sup>We note that although you raise section 552.131, based on your arguments we understand you to raise section 552.135.

to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard 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.) (addressing statutory predecessor). We will therefore consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

Common-law privacy protects information that (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). Information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). This office has found, however, 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).

In addition, the court in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

When there is an adequate summary of a sexual harassment investigation, the summary must be released along with the statement of the accused, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, when no adequate summary exists, detailed statements regarding the allegations

must be released, but the identities of witnesses and victims must still be redacted from the statements. In this instance, only a portion of the submitted information refers to an allegation of sexual harassment, and the submitted information does not include an adequate summary pertaining to this allegation. Because there is no adequate summary of the investigation, the information relating to the sexual harassment investigation must generally be released. However, a portion of this information, which we have marked, reveals the identity of the alleged victim. Accordingly, we conclude that the district must withhold the victim's identifying information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy and the holding in *Ellen*.<sup>2</sup> The district must also withhold the medical and personal financial information that we have marked under section 552.101 in conjunction with common-law privacy. However, although a portion of the remaining records consists of information that is intimate and embarrassing, these records consist of evidence used in an investigation of public employee conduct and qualifications. Thus, we conclude that there is a legitimate public interest in this information, and accordingly, none of the remaining information may be withheld under either section 552.101 in conjunction with common-law privacy or section 552.102(a).

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5; see *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). Upon review, we conclude that in this instance the individuals' privacy interests are outweighed by the public interest in the conduct and qualifications of public employees, and thus, no portion of the remaining information is confidential under constitutional privacy. Therefore, the district may not withhold any information under section 552.101 on that ground.

Next, you claim that portions of the requested information are confidential under section 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. You state that a portion of the submitted information consists of education records. The term "education records" does not include records that pertain to a non-student employee of an educational agency or institution made and maintained in the normal course of business in that person's capacity as an employee. See 20 U.S.C. § 1232g(a)(4)(B)(iii). The information

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<sup>2</sup>Because our determination on this information is dispositive, we do not address your argument under section 552.135.

at issue here, consists of a district police officer's previous education records maintained by the district as part of its investigation of this individual in the context of his employment. Thus, we conclude that no portion of the information at issue consists of education records for the purposes of section 552.114, and the district may not withhold any portion of the submitted information under section 552.114.

Next, we note that some of the remaining information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). However, in this instance you have failed to indicate whether the employee at issue elected to keep her information confidential pursuant to section 552.024 of the Government Code. Thus, pursuant to section 552.117(a)(1), the district must only withhold the personal information of this district employee if she made a timely election to keep her information confidential. We have marked the information that must be withheld if section 552.117(a)(1) applies. However, if the district employee failed to timely make this election, then the district must release this information.

Next, you indicate that a portion of the information consists of the personal information of a district peace officer. Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone numbers, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code.<sup>3</sup> Thus, pursuant to section 552.117(a)(2), the district must withhold information we have marked pertaining to the peace officer at issue.

We note that the submitted information also contains Texas motor vehicle record information. Section 552.130 of the Government Code excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration.<sup>4</sup> Gov't Code § 552.130. We have marked the Texas motor vehicle record information that the district must withhold under section 552.130 of the Government Code.

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<sup>3</sup>"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We also note that the submitted information also contains bank and credit card account numbers. Section 552.136 states 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.” *Id.* § 552.136(b). The district must withhold the account numbers that we have marked under section 552.136 of the Government Code.

Finally, the remaining information also contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137 (b). You do not inform us that the owners of the e-mail addresses have affirmatively consented to their release. Therefore, the district must withhold the e-mail addresses that we have marked under section 552.137 of the Government Code.

In summary, you must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. You must also withhold the information we have marked under section 552.117(a)(1) if the district employee at issue made a timely election to keep her personal information confidential. If the district employee failed to timely make this election, then the district must release this information. You must withhold the peace officer’s personal information we have marked under section 552.117(a)(2). The district must withhold the Texas motor vehicle record information that we have marked under section 552.130, the account numbers that we have marked under section 552.136, and the e-mail addresses that we have marked under section 552.137. 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Justin D. Gordon  
Assistant Attorney General  
Open Records Division

JDG/jh

Ref: ID# 301277

Enc. Submitted documents

c: Mr. Kent Fischer  
The Dallas Morning News  
508 Young Street  
Dallas, Texas 75202  
(w/o enclosures)