



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 3, 2009

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703-5338

OR2009-01393

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# 334044.

The Austin Independent School District (the "district") received a request for three categories of information pertaining to a named individual. You state most of the responsive information has been made available to the requestor. You claim that portions of the submitted personnel records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 section 402.083(a) of the Labor Code, which provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation of the Texas Department of Insurance (the "division")] except as provided by this subtitle[.]" Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), the City of Brownsville had received a request for similar information. This office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* Open Records Decision No. 533 at

3-6; *see also* Labor Code § 402.086 (transferring confidentiality conferred by Labor Code § 402.083(a) to information that other parties obtain from division files). Accordingly, information in the possession of the district that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although you assert the records submitted as Exhibit G are confidential pursuant to section 402.083, you provide no representation, and the documents do not reflect, that the district received these records from the division. Thus, you have failed to demonstrate the applicability of section 402.083 to Exhibit G, and it may not be withheld under section 552.101 on this basis.

We note that Exhibit G consists of medical records. Section 552.101 also encompasses the Medical Practice Act ("MPA"), which applies to medical records. *See* Occ. Code §§ 151.001-165.160. Section 159.002 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.

(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.

Id. § 159.002(b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Therefore, the medical records within Exhibit G may only be released in accordance with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy. 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). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You assert that Exhibits E and F, as well as the information you have highlighted within Exhibit D, are subject to common-law privacy, as this information pertains to the medical condition of the individual named in the request. Although we agree that medical information may be intimate or embarrassing, the information you seek to withhold pertains to injuries suffered within the scope of the named individual's employment with the district. Furthermore, we note that the employee has filed

a grievance against the district regarding these same injuries. Accordingly, we find that there is a legitimate public interest in the information you seek to withhold under common-law privacy. *See* Open Records Decisions Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, none of the information at issue may be withheld under section 552.101 in conjunction with common-law privacy.

We note the submitted documents contain information subject to section 552.117 of the Government Code.¹ Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and 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. *See* Gov't Code §§ 552.117(a)(1), .024. 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). The district may only withhold information under section 552.117(a)(1) on behalf of former or current employees who have made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. In this instance, we have marked the information within the submitted documents that is generally subject to section 552.117. You do not inform this office that the district employee whose information we have marked elected to keep her personal information confidential before the district received the instant request for information. We must therefore rule conditionally. If the employee whose personal information we have marked timely elected to withhold her personal information under section 552.024, this marked information must be withheld under section 552.117(a)(1). If the employee did not timely elect confidentiality, the marked information may not be withheld under section 552.117(a)(1).

In summary, the district may only release the marked medical records in accordance with the MPA. To the extent that the employee at issue made a timely election under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php,

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).

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Reg Hargrove", with a long, sweeping horizontal stroke extending to the right.

Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 334044

Enc. Submitted documents

c: Requestor
(w/o enclosures)