



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 26, 2009

Mr. Fortunato G. Paredes
Escamilla & Poneck, Inc.
Attorney for United Independent School District
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2009-03886

Dear Mr. Paredes:

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# 339016.

The United Independent School District (the "district"), which you represent, received a request for information regarding a named student, specifically including: (1) a specified incident report and all complaints made by the victim; (2) any photographs taken in relation to the incident; (3) correspondence, emails, faxes, notes, and certified mail regarding the incident; (4) disciplinary reports regarding the named student; (5) the personnel files of the officers who investigated the incident; (6) all medical records related to the incident; and (7) all reports regarding three additional named students. You inform us that the district has no information responsive to items 4 and 6 of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Initially, we note that Exhibit "B" constitutes a law enforcement record of a juvenile that is generally confidential under section 58.007(c) of the Family Code. *See* Fam. Code § 58.007(c). In this instance, however, the requestor is an attorney representing one of the juvenile suspects noted in the report. As such, the department may not withhold the submitted report from this requestor under section 58.007(c) of the Family Code. *See id.* § 58.007(e) (providing law enforcement records subject to section 58.007(c) may be inspected or copied by the child). We also note section 58.007(j) provides that, notwithstanding section 58.007(e), any information that is excepted from required disclosure under chapter 552 of the Government Code or other law may still be withheld. *See id.* § 58.007(j)(2). We will, therefore, address your argument under section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information in Exhibit "B" relates to an investigation of possible child abuse conducted by the district's police department. *See id.* § 261.001(1) (defining "abuse" for the purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Upon review, we find that this information consists of files, reports, records, communications, and working papers used or developed in an investigation under chapter 261. Additionally, there is no indication that the district's police department has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information in Exhibit "B" is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2

(1986) (construing predecessor statute). Therefore, the district must withhold Exhibit "B" in its entirety under section 552.101 of the Government Code.²

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act. See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (citing *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976)). Accordingly, we will consider your common-law privacy claim under both sections 552.101 and 552.102 of the Government Code.

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. In this instance, you argue that Exhibit "C" should be withheld in its entirety under section 552.102. We note that this Exhibit contains the personnel file of the officer, a district employee, who investigated the incident specified in the request. This office has found that the public has a legitimate interest in information that relates to public employment and public employees, and information that pertains to an employee's actions as a public servant generally cannot be considered beyond the realm of legitimate public interest. See Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern); 542 (1990); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). Therefore, we find that Exhibit "C" may not be withheld in its entirety under section 552.102.

However, we note that the personnel file at issue contains financial information. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage that is offered by his employer is a

²As our ruling is dispositive, we need not address your other argument against disclosure of this information.

personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. *See* ORD 545. Likewise, an employee's designation of a retirement beneficiary is excepted from disclosure under the common-law right to privacy. *See* ORD 600. However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See id.* at 10. In this instance, you have not provided any arguments explaining which of the retirement and insurance coverages described in Exhibit "C" are optional and which are provided by the district. Therefore, we have marked those portions of the submitted personnel file that appear on their face to reflect voluntary financial decisions by the district employee. We find that there is no legitimate public interest in the release of this information. Accordingly, the district must withhold the information we have marked under section 552.102 in conjunction with common-law privacy. Upon review, we find that no portion of the remaining information in Exhibit "C" constitutes highly intimate or embarrassing information of no legitimate concern to the public. Thus, none of the remaining information may be withheld under either section 552.101 or section 552.102 in conjunction with common-law privacy.

You also raise section 552.101 in conjunction with section 1701.454 of the Occupations Code, which governs the public availability of an F-5 form ("Report of Separation of Licensee") submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) A report or statement submitted to [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release the contents of a report or statement submitted under this subchapter.

Occ. Code § 1701.454. In this instance, the police officer retired from his previous position and, as such, the F-5 form related to the police officer is not subject to release under the statute. We therefore conclude that the district must withhold the submitted F-5 form, which we have marked, under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

You claim that portions of the remaining information in Exhibit "C" are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly,

we have marked information within Exhibit "C" that the district must withhold under section 552.117(a)(2) of the Government Code.

We note that the remaining information in Exhibit "C" contains Texas motor vehicle record information.³ Section 552.130 of the Government Code excepts from disclosure information that "relates 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). The district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, the district must withhold Exhibit "B" in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In Exhibit "C" the district must withhold; the financial information that we have marked under section 552.102 of the Government Code in conjunction with common-law privacy, the F-5 form that we have marked under section 552.101 in conjunction with section 1701.454 of the Occupations Code, the police officer's personal information that we have marked under section 552.117 of the Government Code, and the motor vehicle record information that we have marked under section 552.130 of the Government Code. The remaining information must be released to the requestor.

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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eb

³The Office of the Attorney General will raise a mandatory exception like section 552.130 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 339016

Enc. Submitted documents

c: Requestor
(w/o enclosures)