



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2009

Mr. John A. Kazen
Kazen, Meurer & Pérez, L.L.P
P.O. Box 6237
Laredo, Texas 78042-6237

OR2009-07871

Dear Mr. Kazen:

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# 345690.

The Laredo Independent School District (the "district"), which you represent, received a request for a copy of a specified deposition given by a named district employee pertaining to a specified investigation, as well as any other relevant documents associated with this investigation. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. You also state that the district believes the information may involve the interests of a third party. You state you have notified the interested third party of this request and of their right to submit arguments stating why their information should not be released. See Gov't Code § 552.304 (providing that interested third party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

You assert portions of the submitted information are excepted under section 552.101 of the Government Code, which 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 doctrine of common-law privacy, which 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). 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. Generally, however, 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). The submitted information pertains to allegations of wrongdoing in the course of the named individual's employment. Therefore, we conclude that there is a legitimate public interest in this information. Further, although you claim that the submitted information is excepted from disclosure under section 552.101 in conjunction with common law privacy and the ruling in *Morales v. Ellen*, the submitted deposition does not concern an investigation of sexual harassment. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Therefore, we find that *Ellen* is not applicable in this instance. Accordingly, you may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that section 552.117 of the Government Code may be applicable to portions of the submitted information.¹ Section 552.117(a)(1) of the Government Code 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). Thus, pursuant to section 552.117(a)(1), if the employee at issue made a timely election to keep her information confidential, then the district must withhold the employee's personal information. Accordingly, we have marked the information in the submitted information that must be withheld under section 552.117(a)(1) if that section applies. However, if the employee did not make a timely election to keep her information confidential, it must be released to the requestor along with the remaining submitted information.

¹The Office of the Attorney General will raise a mandatory exception, such as section 552.117, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/eeg

Ref: ID# 345690

Enc. Submitted documents

c: Requestor
(w/o enclosures)