



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2009

Ms. Andrea Sheehan  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2009-09622

Dear Ms. Sheehan:

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# 348907.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for Attorney General letter rulings relied upon by the district in responding to a previous request for information and any relevant correspondence which relates to those decisions. You state that the district has provided the requestor with the requested Attorney General rulings and some of the remaining requested information. You claim that portions of the submitted information are exempted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note and we agree that Exhibits B through D in Exhibit 5 were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-02257 (2009). As we have no indication that the law, facts, or circumstances on which the prior ruling was based have changed, the district must continue to rely on that ruling as a previous determination and withhold or release the information contained in Exhibits B through D in Exhibit 5 in accordance with Open Records Letter

No. 2009-02257.<sup>1</sup> *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You also state that this office has previously ruled upon certain Exhibits in Exhibit 6 in Open Records Letter No. 2009-02605 (2009). In Open Records Letter No. 2009-02605, we ruled, in part, that portions of the submitted information must be released to the requestor, an investigator with the Texas Education Agency (the "TEA"), pursuant to a right of access under the Texas Administrative Code. With respect to the instant request, the requestor is not an investigator with the TEA. Thus, we find that the circumstances have changed and the district may not continue to rely on Open Records Letter No. 2009-02605 as a previous determination. *See id.* Accordingly, we will address your arguments against the disclosure of the Exhibits at issue in Exhibit 6.

Next, we note that you have marked a portion of the submitted information as not responsive to the request. This ruling does not address the public availability of nonresponsive information, and the district is not required to release nonresponsive information in response to this request.

We now address your arguments with respect to the responsive information that is not subject to our previous determination in Open Records Letter No. 2009-02257. 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 exception encompasses information that other statutes make confidential, such as the Family Medical Leave Act (the "FMLA"), section 2654 of title 29 of the United States Code. You assert that the information you have highlighted in the remaining information is confidential under the FMLA. Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states that

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

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<sup>1</sup>As our determination is dispositive with respect to Exhibits B through D in Exhibit 5, we need not address your arguments against the disclosure of this information.

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). Upon review of the remaining information, we find that Exhibits B-1, B-2, and B-4 in Exhibit 6 are confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find that none of the release provisions of the FMLA apply to the information. Thus, we conclude that the district must withhold Exhibits B-1, B-2, and B-4 in Exhibit 6 pursuant to section 552.101 of the Government Code in conjunction with the FMLA. However, upon review of the remaining information you have highlighted, we find that you have failed to demonstrate that any of it constitutes medical certifications, recertifications, or medical histories of employees for purposes of the FMLA. Consequently, no portion of the remaining highlighted information may be withheld pursuant to section 552.101 of the Government Code based on the FMLA.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* at 4. We understand that the individual at issue held an administrator certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of an administrator at the time of the evaluations. You contend that Exhibit E in Exhibit 6 constitutes evaluations for the purpose of section 21.355 of the Education Code. Upon review, we agree that Exhibit E in Exhibit 6 is confidential under section 21.355 of the Education Code. Thus, the district must withhold Exhibit E in Exhibit 6 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Section 552.102(a) 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 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(a).

Common-law privacy 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. 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. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are confidential 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). However, this office has found that the public has a legitimate interest in the qualifications and work conduct of employees of governmental bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow).

Upon review, we find that a portion of the remaining information is intimate or embarrassing and of no legitimate public interest. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find that none of the remaining information you have highlighted constitutes highly intimate or embarrassing information of no legitimate public concern. Thus, none of the remaining information may be withheld on the basis of common-law privacy.

We also understand you to raise constitutional privacy under section 552.101 of the Government Code, which protects two kinds of interests: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of a personal matter. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the “zones of privacy,” pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See Fadjo v.*

*Coon*, 633 F.2d 1172 (5th Cir. 1981); ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Upon review, we conclude that none of the information you have highlighted comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. Thus, no portion of the remaining information may be withheld under section 552.101 on the basis of constitutional privacy.

Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the information in the submitted transcripts at Exhibit F in Exhibit 6 pursuant to section 552.102(b) of the Government Code.

Next, section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that such information be kept confidential under section 552.024. We note that a post office box number is not a "home address" for purposes of section 552.117.<sup>2</sup> 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 current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state that the individual whose information is at issue has elected to keep her personal information confidential prior to the date the district received the current request for information. Thus, the district must withhold the information we have marked under section 552.117(a)(1). The district may not withhold any of the remaining information it has highlighted under section 552.117(a)(1).<sup>3</sup>

We understand you to contend that Exhibit D in Exhibit 6 includes Texas motor vehicle record information excepted from public disclosure under section 552.130 of the

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<sup>2</sup>*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

<sup>3</sup>As our ruling is dispositive in regards to the information we have marked under section 552.117(a)(1), we need not address your remaining argument against the disclosure of a portion of this information.

Government Code. Section 552.130 excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130(a)(1)-(2). Accordingly, the district must withhold the Texas motor vehicle record information you have marked, and the additional information we have marked, under section 552.130 of the Government Code. However, you have failed to demonstrate how the information we have marked for release is subject to section 552.130, and it may not be withheld from disclosure on that basis.

Section 552.136 provides 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. Accordingly, the district must withhold the insurance policy numbers we have marked pursuant to section 552.136 of the Government Code.

Finally, section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Accordingly, the district must withhold the e-mail address you have highlighted with Exhibit A in Exhibit 5 under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

In summary, the district must continue to rely to Open Records Letter No. 2009-02257, and withhold or release Exhibits B through D in Exhibit 5 in accordance with that ruling. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) the FMLA, (2) section 21.355 of the Education Code, and (3) common-law privacy. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold Exhibit F in Exhibit 6 pursuant to section 552.102(b) of the Government Code. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Except for the information we have marked for release, the district must withhold the information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code. The district must also withhold the information we have marked under section 552.136 of the Government Code. The district must withhold the e-mail address you have highlighted under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. 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](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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/dls

Ref: ID# 348907

Enc. Submitted documents

c: Requestor  
(w/o enclosures)