ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2009

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

OR2009-10520

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# 350398.

The United Independent School District (the "district"), which you represent, received a request for all e-mails sent from a named district employee to another district employee during a specified time period. You state you have released some of the requested information to the requestor. You claim that the remaining information is not subject to the Act. Alternatively, you claim the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, we address your contention that the submitted e-mails are not public information subject to the Act. The Act is only applicable to "public information." *See* Gov't Code § 552.021. Section 552.002(a) defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). The submitted e-mails pertain to a district employee's work schedule. After reviewing the information at issue, we find that the submitted e-mails were created in connection with the transaction of official district business by district staff. Therefore, these e-mails constitute "public information" as defined by section 552.002(a) and are subject to the Act. Accordingly, we will address your arguments for the submitted e-mails.

You contend that the submitted information is confidential under the doctrines of constitutional and common-law privacy. Section 552.101 of the Government Code excepts

from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrines of constitutional and common-law 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 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

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. 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 type 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.

After reviewing the information at issue, we find that a portion of it is protected by constitutional privacy. Therefore, the district must withhold the information we have marked under section 552.101 in conjunction with constitutional privacy. However, we find the district has failed to demonstrate how any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Further, we find none of the remaining information is highly intimate or embarrassing. Therefore, the district may not withhold any of the remaining information under section 552.101 on the basis of constitutional or common-law privacy.

We note that a portion of the remaining information may be subject to section 552.117 of the Government Code.[1] Section 552.117(a)(1) excepts from disclosure the current 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 request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by 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

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

(1989). Pursuant to section 552.117(a)(1), the district must withhold the social security number, home address, home telephone number, and family member information of a current or former district employee who elected, prior to the district's receipt of the request for information, to keep such information confidential. We have marked the information that is subject to section 552.117. If the employee at issue timely elected to withhold her personal information, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employee at issue did not elect to keep such personal information confidential, the information must be released.

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with constitutional privacy. If the employee at issue timely elected to withhold her personal information, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employee at issue did not elect to keep such personal information confidential, the information must be released. 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, 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,

Christina Alvarado
Assistant Attorney General
Open Records Division

CA/rl

Ref: ID# 350398

Enc. Submitted documents

cc: Requestor
(w/o enclosures)