ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 8, 2013

Mr. Miles J. LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2013-02261

Dear Mr. LeBlanc:

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# 478297.

The Houston Independent School District (the "district") received six requests from the same requestor for information pertaining to three named employees, including any grievances or complaints against the named employees and doctor's notes.[1] We understand the district will release some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention the district did not fully comply with the Act's procedural requirements in asking this office for a ruling. Section 552.301 of the

[1]We note the requestor has asked the district to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We assume the district has made a good faith effort to do so.

Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See id.* § 552.301(b).

The requestor states the requests for information were sent to the district on November 8, 2012, and argues the district failed to comply with the ten-business-day-deadline. The district states it received the requests on November 9, 2012, and has submitted copies of the requests to our office. We note the requestor sent the present requests for information by e-mail to the district's designated public information officer after business hours on November 8, 2012. *See id.* § 552.301(c) (written request made through e-mail must be sent to the governmental body's officer for public information, or the officer's designee, in order to trigger the deadlines provided by the Act). Based on the information provided to this office, we consider the requests to have been received by the district on November 9, 2012. The district states it was closed for business from November 21, 2012, through November 23, 2012, in observance of Thanksgiving. This office does not count any holidays observed by a governmental body as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the district's ten-business-day deadline was November 28, 2012. Upon review, we find the district's request for a ruling was postmarked on November 28, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the district complied with the requirements of section 552.301 of the Government Code in asking this office for a ruling.

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. This section encompasses information protected by other statutes. Access to medical records is governed by the Medical Practice Act (the "MPA"), Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides:

> (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
>
> (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. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. The information we have marked consists of medical records subject to the MPA. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code.[2]

We next address your argument under section 552.135 of the Government Code as it is potentially the most encompassing. Section 552.135 of the Government Code provides the following:

> (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
>
> (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135. We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. *See id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in the course of an investigation, but do not make the initial report are not informants for purposes of section 552.135 of the Government Code. In this instance, you indicate, and the submitted documents confirm, the remaining information reveals the identity of a district employee who reported possible violations of criminal, civil, or regulatory law to the district. We conclude the district must withhold the identifying information of the employee who reported the possible violations, which we have marked, under section 552.135 of the Government Code.[3] However, we find the district has failed to demonstrate how any of the remaining information reveals the identity of an individual who made an initial report of a possible violation to the district or the proper regulatory enforcement authority. Thus, the district has not demonstrated the remaining information reveals the identity of an informer for the purposes of section 552.135 and it may not be withheld on that basis.

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[2]As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

[3]As our ruling on this information is dispositive, we need not address your remaining arguments against its disclosure.

Section 552.101 of the Government Code 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). The type of information considered intimate or 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 found some kinds of medical information or information indicating disabilities or specific illnesses are 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). We note the fact that a public employee is sick is public information, but specific information about illnesses is excepted from disclosure. *See* ORD 470 at 4 (although fact that public employee is sick is public, specific information about illnesses is excepted from disclosure under section 552.101).

Further, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private).

Upon review, we find some of the remaining information would ordinarily be highly intimate or embarrassing and not of legitimate concern. In this instance, however, the identity of the individual to whom this information pertains is already protected under section 552.135 of the Government Code. As such, none of the remaining information implicates the privacy rights of an identified individual. Therefore, the district may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) 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). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). Upon review, we find none of

the remaining information is subject to section 552.102(a) of the Government Code and none of it may be withheld on that basis.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 159.002 of the Occupations Code. The district must withhold the information we have marked under section 552.135 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, 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, toll free, at (888) 672-6787.

Sincerely,

Jennifer Luttrall

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 478297

Enc. Submitted documents

c: Requestor
(w/o enclosures)