



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 25, 2015

Ms. Ylise Janssen
Senior School Law Attorney
Office of the Chief of Staff & Legal Services
Austin Independent School District
1111 West Sixth Street, Suite A240
Austin, Texas 78703

OR2015-17725

Dear Ms. Janssen:

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# 576990.

The Austin Independent School District (the "district") received a request for information pertaining to the requestor and a specified audit during a specified time period. You state the district is releasing some of the requested information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, state and local educational authorities that receive a request for education records from a member

¹A copy of this letter may be found on the attorney general's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable” information is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). We note you have submitted, among other things, both redacted and unredacted records, which may constitute education records. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to those records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education record.² However, we will consider the district’s arguments against disclosure of the submitted information.

Next, we note some of the information submitted as Exhibit C consists of a completed audit report subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body,” unless it is excepted by section 552.108 of the Government Code or made confidential under the Act or other law. Gov’t Code § 552.022(a)(1). Since you do not raise section 552.108, the district may withhold the completed audit report only to the extent it is made confidential under the Act or other law. You seek to withhold the completed audit report under section 552.116 of the Government Code. However, section 552.116 is a discretionary exception and does not make information confidential under the Act. *See id.* § 552.116; *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the completed audit report may not be withheld under section 552.116 of the Government Code. However, we note a portion of the completed report is subject to section 552.130 of the Government Code.³ As section 552.130 can make information confidential under the Act, we address the applicability of this exception to the information subject to section 552.022(a)(1).

We will now address your argument under section 552.116 for the remaining information in Exhibit C, as it is potentially the most encompassing exception. Section 552.116 of the Government Code provides:

(a) An audit, working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required

²In the future, if the district does obtain consent to submit unredacted education records and seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov’t Code § 552.116. You assert the remaining information in Exhibit C consists of audit working papers prepared or maintained in conducting an audit of the district’s Risk Management Department. You further state the audit at issue has not yet been completed, and is being conducted by the district’s internal auditors as authorized by section 11.170 of the Education Code and the district’s board of trustees and in accordance with the auditing standards of the Institute of Internal Auditors. *See* Educ. Code § 11.170 (providing district’s board of trustees may select an internal auditor who reports directly to the board). Based on your representations and our review, we agree the remaining information in Exhibit C constitutes audit working papers under section 552.116. Thus, the district may withhold the remaining information in Exhibit C under section 552.116 of the Government Code.⁴

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the

⁴As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history).

Upon review, we find the information we have marked in Exhibit B satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. The district has failed to demonstrate, however, the remaining information in Exhibit B is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the remaining information in Exhibit B under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, 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. *See* Gov't Code § 552.117(a); Open Records Decision No. 622 (1994). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of 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 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked the personal information of district employees. If the employees whose personal information is at issue timely elected to keep their information confidential pursuant to section 552.024, the district must withhold the information we have marked under section 552.117(a)(1); however, the district may only withhold the marked personal cellular number under section 552.117(a)(1) if a governmental body does not pay for the cellular telephone service.

The district may not withhold this information under section 552.117(a)(1) if the employees did not timely elect to keep their information confidential pursuant to section 552.024.

Section 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's license or driver's license or a motor vehicle title or registration issued by a Texas agency, or an agency of another state or country. *See* Gov't Code § 552.130(a)(1)-(2). Upon review, we find the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.136 states "[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, we find the district must withhold the information we have marked under section 552.136 of the Government Code.

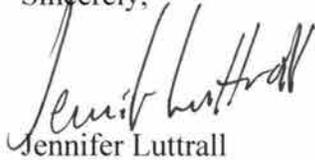
We note some of the remaining information in Exhibit B consists of personal e-mail addresses subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the district may withhold the remaining information in Exhibit C, which is not subject to section 552.022(a)(1) of the Government Code, under section 552.116 of the Government Code. The district must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with common-law privacy. If the employees whose personal information we have marked timely elected to keep their information confidential pursuant to section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the district may only withhold the marked personal cellular number under section 552.117(a)(1) if a governmental body does not pay for the cellular telephone service. The district must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 576990

Enc. Submitted documents

c: Requestor
(w/o enclosures)