Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1994

Mr. James R. Raup
McGinnis, Lochridge & Kilgore
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR94-523

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 27111.

The Austin Independent School District (the "school district"), which you represent, has received a request for information regarding an automobile accident that involved a school district employee. Specifically, the requestor seeks "copies of any and all photographs in your possession taken at the May 25, 1994, automobile accident." You have submitted the requested photographs to us for review and claim that sections 552.101 and 552.103 of the Government Code except them from required public disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." A governmental body must withhold information from required public disclosure under section 552.101 if the information meets the criteria the Texas Supreme Court articulated for common-law privacy in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under *Industrial Foundation*, a governmental body must withhold information on common-law privacy grounds only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. While common-law privacy may protect an individual's medical history, *see, e.g.*, Open Records Decision Nos. 539 (1990); 455 (1987); 422 (1984), it does not protect all medically related information, *see* Open Records Decision No. 478 (1987). Individual determinations are required. Open Records Decision No. 370 (1983).

We have examined the photographs submitted to us for review. They depict the scene of a minor automobile collision. Nothing in these photographs is highly intimate or embarrassing. Accordingly, we conclude that the submitted photographs may not be

withheld from required public disclosure under section 552.101 of the Government Code. *See* Open Records Decision No. 378 (1983) at 2.

Next, we address your claim that section 552.103 of the Government Code, the "litigation exception," excepts the requested information from required public disclosure. Section 552.103(a) of the Government Code excepts from required public disclosure information

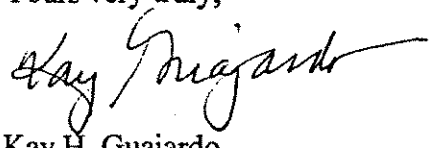
> (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
>
> (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 (1990) at 5.

You state: "[i]t is my understanding that the requestor is an attorney purportedly representing an AISD teacher in litigation or anticipated litigation arising out of an automobile accident involving this AISD teacher, who was on her way to work at the school." Section 552.103(a) applies only where the litigation involves or is expected to involve *the governmental body* which is claiming the exception. *See* Open Records Decision No. 392 (1983). You do not claim that the school district is somehow involved in the pending or anticipated litigation arising from the automobile collision. Furthermore, though you say the school district anticipates litigation in which a school district employee is a party, you did not assert, nor is it apparent, that the employee is a party as a "consequence of . . . [her] employment." Accordingly, section 552.103(a) does not apply. The school district must promptly release the requested photographs to the public.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Government Section

KHG/GCK/rho

Enclosures: Submitted photographs

Ref. ID# 27111

cc: Ms. Sudie Thompson
McAuley, MacDonald, Love & Devin
1201 Elm Street
Dallas, Texas 75270-2014
(w/o enclosures)