



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 7, 1997

Mr. Glen Patrick
McNally & Patrick L.L.P.
P.O. Box 1080
Tyler, Texas 75710-1080

OR97-2463

Dear Mr. Patrick:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110171.

The Lindale Independent School District (the "district"), which you represent, received a request for Jody Shaw's personnel file and information pertaining to the district's statement about Mr. Shaw's payment of certain sales taxes. Because you do not seek a decision with regards to the latter portion of the request, we assume that you have released the information to the requestor. As for the personnel file, although you have raised no exceptions to disclosure, you ask which documents from the personnel file may be released. You submitted the information the district seeks to withhold from public disclosure.

We note that the submitted information contains information protected by common-law privacy as incorporated by section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law 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.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). This office has found some kinds of medical information 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 have marked the information that must be withheld under common-law privacy as encompassed by section 552.101.

Section 552.101 also covers information deemed confidential by statute. The following information is confidential by statute: Employment Eligibility Verification, Form I-9, 8 U.S.C. § 1324a(b)(5), and medical records or communications between a physician and patient under the Medical Practice Act, V.T.C.S. art. 4495b, § 5.08(b), (c), which may be disclosed only as permitted under section 5.08(b). We have marked this information for your convenience.

The Seventy-fifth Legislature added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

* * * *

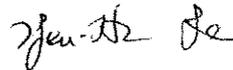
(b) Information described by Subsection (a) may be released only if, and in the manner, authorized by Chapter 730, Transportation Code.

See Act of May 29, 1997, S.B. 1069, § 4, 75th Leg., R.S. (to be codified at Gov't Code § 552.130). We have marked information which you must withhold pursuant to section 552.130.

Lastly, the documents also contain information that is confidential under section 552.117 of the Government Code. Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold this information if a current or former employee or official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). We have marked information excepted from disclosure by section 552.117. *You must release the remaining information which we have not marked.*

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 110171

Enclosures: Marked documents

cc: Mr. Wayne L. Lyon
P.O. Box 1199
Lindale, Texas 75771
(w/o enclosures)