



August 8, 2000

Mr. Joe De Los Santos
Walsh, Anderson, Brown,
Schulze & Aldridge, P.C.
P. O. Box 460606
San Antonio, Texas 78246-0606

OR2000-2996

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138162.

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for any and all documents pertaining to a named individual concerning her employment or termination with you. You state that portions of the requested material will be provided to the requestor immediately. You claim that the remainder of the requested information is excepted from disclosure under sections 552.026, 552.101, 522.114, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 159.002 of the Occupations Code, known as the Medical Practice Act ("MPA"), provides for the confidentiality of medical records under certain circumstances. Section 552.101 encompasses confidentiality provisions such as the MPA.

The MPA provides in relevant part:

(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 may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, the MPA governs access to medical records. Open Records Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c); Open Records Decision No. 598 (1991). We agree that the documents the district marked as medical records of the named individual represent medical records for the purpose of the MPA. We also have marked an additional document that is a medical record for the purpose of the MPA. Therefore, the district may release these marked records only in accordance the MPA.

Additionally, the submitted information contains an eligibility verification I-9 form. Release of an eligibility verification form I-9 is governed by title 8, section 1324a of the United States Code. This statute provides that I-9 forms “may not be used for purposes other than for enforcement of [the immigration laws of] this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under chapter 552 of the Government Code would not be for a permitted purpose and, therefore, we conclude that the I-9 form is confidential and must be withheld under section 552.101 of the Government Code.

Next, you contend that the named individual’s social security number is confidential under section 51.251 of the Texas Occupations Code. Section 51.251 states that:

The social security number of an applicant or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under the open records law.

Occ. Code §51.251.

Under this provision only an applicant’s social security number provided to a licensing agency is confidential. We do not find the district to be a licensing agency. Therefore, the district may not withhold the named individual’s social security number under section 51.251 of the Occupations Code.

However, social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We

have no basis for concluding that the social security number in the records here is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Next, we note that the submitted documents contain educational records of students within the Edinburg school district. Sections 552.026 and 552.114 of the Government Code in conjunction with the Family Educational Rights and Privacy Act ("FERPA"), except the personally identifiable information concerning students contained in the submitted documents. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). We find that the submitted

documents contain personally identifiable information concerning students in education records. We conclude that the students' names that appear in the submitted documents are excepted from public disclosure under FERPA in conjunction with sections 552.026 and 552.114.

Next, we note that the submitted documents contain information that is excepted from public disclosure under section 552.130 of the Government Code. Section 552.130 excepts from required public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, the district must withhold the Texas driver's license in its entirety and the Texas driver's license number that appear in the documents pursuant to section 552.130 of the Government Code. We agree that the information the district marked must be withheld from public disclosure under section 552.130 and have made additional markings.

Finally, we find that the submitted documents contain information that must be withheld under section 552.117(1) of the Government Code. Section 552.117(1) excepts a public employee's home address, home telephone number, social security number, or information that reveals whether the employee has family members, when the public employee requests, under section 552.024, that this information be kept confidential. Therefore, section 552.117(1) requires you to withhold this information of a current or former employee or official who has elected under section 552.024 to keep this information confidential. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). You state that the employee at issue made a section 552.024 election in the fall of 1998. You state that the named employee elected to withhold the employee's home phone number and home address. Therefore, we conclude that the district must withhold this information that appears in the submitted documents. After reviewing the submitted documents, we agree that the information the district marked must be withheld under section 552.117(1) and have made additional markings.¹

In summary, the district must withhold the students' names that appear in the documents under sections 552.026 and 552.114 in conjunction with FERPA. The district must withhold the Texas driver's license in its entirety and the Texas driver's license number under section 552.130 of the Government Code. The home address and home phone number of the named employee must be withheld under section 552.117(1) of the Government Code. The

¹We note that the documents contain the home addresses and phone numbers of other district employees. If these employees made the requisite election under section 552.024 prior to the district's receipt of this request, then this information must be withheld under section 552.117(1). Otherwise, the district must release this information.

district must withhold the eligibility verification I-9 form under section 1324a(b)(5) of Title 8 of the United States Code and section 552.101 of the Government Code. The district must withhold the medical records under section 552.101 in conjunction with the MPA as discussed above. Finally, the district must not withhold the social security number that appears in the submitted documents under section 51.251 of the Occupations Code. However, unless the district obtained or maintained the submitted social security number pursuant to a law enacted on or after October 1, 1990, the district must release the submitted social security number. The district must release the remainder of the submitted documents.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

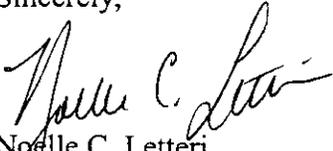
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--stin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Noelle C. Letteri". The signature is fluid and cursive, with a horizontal line at the end.

Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/pr

Ref: ID# 138162

Encl. Submitted documents

cc: Ms. Magdalena Ayala
P. O. Box 6532
McAllen, Texas 78502
(w/o enclosures)