



March 22, 2001

Ms. Cheryl T. Mehl
Schwartz & Eichelbaum, P.C.
4201 West Parmer Lane, Suite 100
Austin, Texas 78727

OR2001-1128

Dear Ms. Mehl:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145230.

The New Deal Independent School District (the "district"), which you represent, received a request for all records regarding action taken with respect to Matt Heikes' (an Agricultural Teacher) involvement in the shooting of Patti Hensley's dogs on school property, including Matt Heikes' employment file. You indicate that redacted copies of the submitted documents have already been provided to the requestor. You claim that the redacted information is excepted from disclosure under sections 411.097(c), 552.101, 552.102 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You first assert that Matt Heikes has the right to have certain personal information withheld from disclosure under section 552.117. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have submitted information showing that Matt Heikes made a timely election under section 552.024. Therefore, the district must

withhold his home address and telephone number, social security number, and any information that reveals whether he has family members.

You also contend that all information in the employee's college transcripts in the possession of the district, other than the employee's name, degree granted, and courses taken, is protected under section 552.102(b) of the Government Code. Section 552.102(b) of the Government Code protects from public disclosure:

a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Accordingly, we conclude that the district must release the curriculum and the degree obtained from Matt Heikes' college transcripts (Attachment 3). The remaining information in the transcripts must be withheld pursuant to section 552.102(b).

Next you assert that the district must withhold from the requestor the entire criminal history record information contained in Attachment 4 pursuant to section 411.097(c) of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." Criminal history record information ("CHRI") is made confidential under several provisions of law. Section 22.083 of the Education Code authorizes school districts to obtain CHRI related to their employees, applicants, and volunteers from any law enforcement or criminal justice agency. Federal regulations generally prohibit the subsequent release or disclosure of such CHRI obtained by noncriminal justice agencies. *See* 28 C.F.R. § 20.21(c)(1). School districts are also authorized to obtain CHRI from the Department of Public Safety. Gov't Code § 411.097. Section 411.097 of the Government Code states that a school district may not release this CHRI "to any person, other than the individual who is the subject of the information, the Texas Education Agency, the State Board for Educator Certification, or the chief personnel officer of the transportation company." Gov't Code § 411.097(c). Consequently, you must withhold Attachment 4 pursuant to section 411.097 of the Government Code.

Finally, you assert that certain medical information contained in Attachment 5 is confidential and must be withheld from the requestor. Attachment 5 contains medical records that are subject to section 159.002 of the Occupations Code, known as the Medical Practice Act ("MPA"), in conjunction with section 552.101 of the Government Code. As explained above, 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). The records in Attachment 5 are confidential and the district may release those records only in accordance with the MPA.

We note that certain information contained in the Attachment 2 is confidential under section 552.130 of the Government Code. 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; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the district must withhold the temporary driver's permit and the driver's license and vehicle identification numbers pursuant to section 552.130.

We further note that certain of the documents in Attachment 2 contain personal financial information. This office has found that an individual's personal financial information not relating to a financial transaction between the individual and a governmental body is excepted from required public disclosure under common law privacy as encompassed by section 552.101 of the Government Code. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. *Id.* at 10-11. We find no indication that the financial information at issue relates to a transaction between the

named individual and a governmental body. We have accordingly marked the financial information for redaction and determine that this information must be withheld pursuant to section 552.101 in conjunction with the common law right to privacy.

In summary, the district must withhold the home address and phone number, social security number, and family member information of the named district employee under section 552.117. While the district must release the curriculum and degree obtained from the employee's college transcripts (Attachment 3), the remaining information in the transcripts must be withheld pursuant to section 552.102(b). In addition, the criminal history record information obtained and compiled by the district (Attachment 4) must be withheld in its entirety under section 552.101. The district may release the medical records in Attachment 5 only in accordance with the MPA. Further, the district must withhold the temporary driver's permit and the driver's license and vehicle identification numbers pursuant to section 552.130. Finally, the district must withhold the employee's personal financial information pursuant to section 552.101. For your convenience, we have marked the information that must be withheld from Attachments 2, 4 and 5 pursuant to sections 552.101, 552.117 and 552.130 of the Government Code.

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,

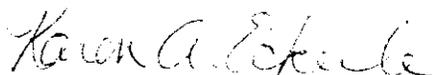
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/seg

Ref: ID# 145230

Encl: Marked documents

cc: Mr. Christian Wilkerson
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(w/o enclosures)