



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 16, 2003

Mr. Dennis J. Eichelbaum
Schwartz & Eichelbaum, P.C.
7400 Gaylord Parkway, Suite 200
Frisco, Texas 75034

OR2003-4120

Dear Mr. Eichelbaum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182814.

The Greenville Independent School District (the "district"), which you represent, received a request for information related to a former district employee. You state that the district intends to release responsive documents to the requestor. You claim that a portion of the requested information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]"¹ The test for privacy under section 552.102 is the same as the test under section 552.101 in conjunction with common-law privacy.² Under section 552.101, common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976),

¹Anything relating to an individual's employment and its terms constitutes information relevant to the individual's employment relationship and is a part of the individual's personnel file. See Open Records Decision No. 327 at 2 (1982).

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

cert. denied, 430 U.S. 931 (1977). Because of the greater legitimate public interest in matters involving employees of governmental bodies, privacy under section 552.102 is confined to information that reveals "intimate details of a highly personal nature." See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.--Austin 1983, writ ref'd n.r.e.); Open Records Decision Nos. 473 at 3 (1987), 444 at 3-4 (1986), 423 at 2 (1984). Thus, public employee privacy under section 552.102 is "very narrow." See Open Records Decision No. 400 at 5 (1983).

You assert that "[t]he personal invasion of this document would override the need to release [it]." We disagree. We find that the public has a legitimate interest in the requested information. Therefore, the district may not withhold this information under section 552.102. See also Open Records Decision Nos. 444 at 5 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (information may not be withheld under section 552.102 if it is of sufficient legitimate public interest, even if person of ordinary sensibilities would object to release on grounds that information is highly intimate or embarrassing).

We note that section 552.117 of the Government Code may be applicable to some of the submitted information. 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 a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For an employee who timely elected to keep his personal information confidential, the district must withhold the employee's home address and telephone number, social security number, and any information that reveals whether the employee has family members. The district may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential.

In summary, for an employee who timely elected to keep his personal information confidential, the district must withhold under section 552.117 the employee's home address and telephone number, social security number, and any information that reveals whether the

employee has family members. The district may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential. The remaining submitted information must be released to the requestor.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "Cindy Nettles". The signature is fluid and cursive, with the first name being more prominent.

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 182814

Enc. Submitted documents

c: Mr. Harold B. Cornish
501 Nora Lane
DeSoto, Texas 75115
(w/o enclosures)