



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 5, , 2005

Ms. Ellen B. Huchital
McGinnis, Lochridge, & Kilgore, L.L.P.
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010

OR2005-02888

Dear Ms. Huchital:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221415.

The Eanes Independent School District (the "district"), which you represent, received a request for information related to athletic programs in the district's schools. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common law privacy which protects information 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace,

¹ We assume the sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

The district "asserts that the information relating to telephone numbers and addresses of community members and members of the public [in the submitted information] is confidential under [section] 552.101 [because] these individuals did not consent to the release of this information[, r]eleasing this information would be an unwarranted invasion of privacy, and the public has no legitimate interest in this information." We have reviewed the information you have marked and conclude that none of it is excepted under common law privacy, and it may not be withheld on that basis. *See* Open Records Decisions Nos. 478 (1987), 455 (1987) (absent special circumstances, names, addresses, and telephone numbers are not "intimate" information).

The district also asserts that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former 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 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the district must withhold personal information that pertains to a current or former official or employee who made a timely election to keep such information confidential. Such information may not be withheld for individuals who did not make a timely election.

If section 552.117 does not apply, social security numbers may nevertheless be confidential under federal law. Section 552.101 of the Government Code also excepts from disclosure information considered to be confidential by statute. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or 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 any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the district should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

The submitted information also includes a bank account number and credit card numbers which the district asserts are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't

Code § 552.136. We, therefore, agree that the bank account and credit card numbers must be withheld under section 552.136.

Finally, the district asserts that “all private, non-governmental e-mail addresses” in the requested information are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov’t Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. Unless the e-mail addresses at issue are a type specifically excluded by section 552.137(c), the district must withhold e-mail addresses of members of the public in accordance with section 552.137 if the district does not receive consent for their release.

In summary, pursuant to section 552.117 of the Government Code the district must withhold personal information that pertains to a current or former official or employee who made a timely election to keep such information confidential. The district is advised that the social security numbers in the requested information may be confidential under federal law. The bank account and credit card numbers in the requested information must be withheld under section 552.136. The e-mail addresses of members of the public within the requested information must be withheld under section 552.137 unless consent for their release is obtained. The district must release the remainder of the requested information 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 221415

Enc. Submitted documents

c: Ms. Dianna Pharr
c/o Ms. Ellen B. Huchital
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