



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 24, 2007

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703-5399

OR2007-04643

Dear Ms. Janssen:

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# 276613.

The Austin Independent School District (the "district") received a request for (1) the complete personnel and departmental files, including disciplinary history, for two named individuals; (2) racial profiling statistics, tabulated by individual officer if available, reported to the district by its police department for 2004 and 2005, including the date that the statistics were reported by the police department to the district, the date they were reported to the state, and to which agency they were reported; and (3) copies of four specified district police department reports. You state that you do not have the requested profiling statistics by individual officer.¹ You state you have redacted the social security numbers from the submitted information pursuant to section 552.147 of the Government Code. *See Gov't Code § 552.147* (authorizing a governmental body to redact a living person's social security number from public release without the necessity of requesting decision from this office under the Act). You also state you have redacted an officer's home address, home telephone number, and family member information pursuant to a previous determination issued by this

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

office in Open Records Decision No. 670 (2001).² You state you have released some information to the requestor, but claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.117, and 552.130 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the issue of whether an individual's date of birth is private is currently before the Third Court of Appeals: *Greg Abbott, Attorney General of Texas v. State Bar of Texas*, No. 03-06-00592-CV, (Tex. App.—Austin Oct.3, 2006). Accordingly, we do not address your arguments with regard to the birth dates that the district seeks to withhold. We will allow the court of appeals to determine whether that type of information must be released to the public.

Next, we must address the district's obligations under section 552.301 of the Government Code. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See Gov't Code* § 552.301(b). Although you timely claimed sections 552.101, 552.117, and 552.130 as exceptions to disclosure, you did not raise section 552.108 within the ten-business-day period prescribed by section 552.301(b) of the Government Code. Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See Open Records Decision No. 150 at 2* (1977). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 665 at 2 n.5 (2000) (discretionary

²*See* Open Records Decision No. 670 at 6 (2001) (authorizing all governmental bodies that are subject to the Act to withhold home addresses and telephone numbers, personal cellular telephone numbers, personal pager numbers, social security numbers, and family member information of peace officers without necessity of requesting attorney general decision under section 552.117(a)(2)); *see also* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination under section 552.301).

³We note that although you also raise section 552.102 of the Government Code, you make no arguments in support of this exception. Therefore, we assume you have withdrawn your claim that this exception applies to any of the submitted information.

exceptions in general). *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, you may not withhold the submitted information under section 552.108 of the Government Code. However, we will consider the applicability of sections 552.101, 552.117, and 552.130 of the Government Code.

You assert that some of the submitted information is excepted under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information protected by other statutes. Gov’t Code § 552.101. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The district is not an agency authorized to conduct a chapter 261 investigation. *See id.* §§ 261.301, 261.406. However, it appears that Exhibit 16 contains information from investigations that were conducted under chapter 261 and that were provided to the district by the district’s police department. *See id.* § 261.406(b). You have not indicated that the district’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, Exhibit 16 is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold Exhibit 16 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 also encompasses information protected by section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Id. § 58.007(c). We have reviewed the submitted information and find that Exhibit 18 involves allegations of juvenile conduct in violation of penal statutes that occurred after September 1, 1997. Thus, this information is subject to section 58.007. Since none of the exceptions in section 58.007 appear to apply, Exhibit 18 is confidential under section 58.007(c) of the Family Code and must be withheld pursuant to section 552.101 of the Government Code. However, the remaining submitted report does not identify a juvenile suspect or offender and is thus not confidential under section 58.007.

Section 552.101 also encompasses the Medical Practice Act (“MPA”), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002. Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The MPA permits disclosure of MPA records to the patient, a person authorized to act on the patient's behalf, or a person who has the written consent of the patient. Occ. Code §§ 159.003, .004, .005. Thus, the district must release the medical records in Exhibit 11, which we have marked, only in accordance with the MPA. Open Records Decision No. 598 (1991).

The submitted information in Exhibit 10 includes an ST-3 accident report form completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (Texas Peace Officer's Accident Report form). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for the release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *Id.* § 550.065(c)(4). Under this provision, the DPS or another governmental body is required to release a copy of an accident report to a person who provides the governmental body with two or more pieces of information specified by the statute. *Id.* In the present request, the requestor has not provided the required information. Accordingly, the district must withhold the submitted ST-3 accident report form in Exhibit 10, which we have marked, under section 552.101 pursuant to section 550.065(c) of the Transportation Code.

We now address your assertion that the submitted documents contain criminal history record information ("CHRI"). Section 552.101 also encompasses information protected by section 411.083 of the Government Code. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Section 411.083 deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must

be withheld under section 552.101 in conjunction with Government Code chapter 411, subchapter F. However, CHRI does not include driving record information. *See id.* § 411.082(2)(B). After reviewing the submitted information, we have marked the CHRI in Exhibit 13 that must be withheld under section 552.101 of the Government Code.

You also raise section 552.101 in conjunction with common-law privacy. The common-law right to privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600, 545 (1990); details of an employee's enrollment in optional health and insurance programs, employee's dependent coverages, and direct deposit authorization, *see* Open Records Decision No. 600 at 9-12; credit reports, financial statements, and other personal financial information, *see* Open Records Decision No. 523 (1989).

We note that the information in question relates to current or former officials and employees of the district. As this office has often noted, the public generally has a legitimate interest in information concerning public employment and public employees. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). We have marked personal financial information that the district must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. We conclude that none of the remaining information at issue is protected by common-law privacy, and the district may not withhold any of the remaining information on that basis under section 552.101 of the Government Code.

Some of the submitted information is subject to section 552.117(a)(2) of the Government Code, which excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information regarding a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the

Government Code to keep such information confidential.⁴ As previously noted, you have redacted personal information of the peace officer pursuant to the previous determination of this office in Open Records Decision No. 670. We have marked additional information that must also be withheld under section 552.117(a)(2) of the Government Code. We note, however, that a post office box number is not a “home address” for purposes of section 552.117.⁵ We note that some of the information you have redacted is not subject to section 552.117(a)(2). We have marked this information for release to the requestor.

You assert that some of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 provides that 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.” Gov’t Code § 552.130. In accordance with section 552.130 of the Government Code, the district must withhold the Texas motor vehicle record information we have marked in the submitted information.

We note that the remaining information includes an insurance policy number. Section 552.136 of the Government Code states 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.” *Id.* § 552.136.⁶ The district must, therefore, withhold the insurance policy number that we have marked under section 552.136 of the Government Code.

In summary, the district must withhold the following under section 552.101 of the Government Code: 1) Exhibit 16 in conjunction with section 261.201 of the Family Code; 2) Exhibit 18 in conjunction with section 58.007 of the Family Code; 3) the medical records we have marked in Exhibit 11 pursuant to the MPA; 4) the ST-3 accident report form we have marked in Exhibit 10 pursuant to section 550.065(c) of the Transportation Code; 5) the CHRI we have marked in Exhibit 13 pursuant to chapter 411 of the Government Code; and 6) the information we have marked pursuant to common-law privacy. The district must also withhold the information we have marked pursuant to sections 552.117(a)(2), 552.130,

⁴“Peace officer” is defined by Article 2.12 of the Texas Code of Criminal Procedure.

⁵See Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov’t Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly required confidentiality).

⁶The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

and 552.136 of the Government Code. The remaining 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).

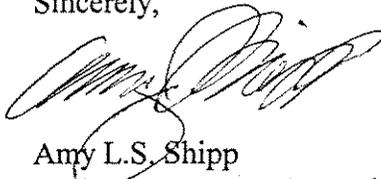
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "Amy L.S. Shipp", written in a cursive style.

Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/mcf

Ref: ID# 276613

Enc. Submitted documents

c: Mr. Trent Twiestmeyer
106 Windmill Circle
Leander, Texas 78641
(w/o enclosures)