



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 13, 2009

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
1111 West 6<sup>th</sup> Street  
Austin, Texas 78703-5338

OR2009-01962

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# 334913.

The Austin Independent School District (the "district") received a request for the e-mails of three named individuals for a specified time period. You state you have released most of the information. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the submitted information is not responsive to this request. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request. Accordingly, we will address your arguments with regard to the responsive information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by the Americans with Disabilities Act (the "ADA"). The ADA provides that information about the medical

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<sup>1</sup>We assume that the representative 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.

conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. In addition, an employer's medical examination or inquiry into the ability of an employee to perform job-related functions is to be treated as confidential medical records. 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996).

The Equal Employment Opportunity Commission (the "EEOC") has determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997).

Federal regulations define "disability" for purposes of the ADA as "(1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment." 29 C.F.R. § 1630.2(g). The regulations further provide:

physical or mental impairment means: (1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

29 C.F.R. § 1630.2(h). Based on our review, we conclude a portion of the information in Exhibit C is subject to the ADA. Accordingly, the district must withhold the information we have marked under the ADA pursuant to section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). You claim Exhibit D should be withheld in its entirety on the basis of common-law privacy. Generally only in certain instances, where it is demonstrated the requestor knows the identity of the victim, as well as the nature of the incident, do we require information in its entirety to be withheld to protect the victim's privacy. Here, although you seek to withhold Exhibit D in its entirety, you have not demonstrated, nor does the information reflect, a situation in which this information must be withheld in its entirety on the basis of common-law privacy. After reviewing Exhibit D, we find it is not intimate or embarrassing and may not be withheld on the basis of common-law privacy. This office has found medical information or information indicating disabilities or specific illnesses is excepted from required public disclosure under common-law privacy. We note a public employee's scope of privacy is

narrow with regards to personnel information. *See* Open Records Decision Nos. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 423 at 2 (1984) (scope of public employee privacy is narrow). Based on your representations and our review, we have marked the information that is intimate or embarrassing and not of legitimate public interest. Accordingly, the district must withhold the marked information under section 552.101 in conjunction with common-law privacy. The remaining information is either not intimate or embarrassing or it is of legitimate public interest. Thus the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

The remaining information, however, contains information subject to sections 552.117(a)(1) and 552.137 of the Government Code.<sup>2</sup> 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. Gov't Code § 552.117(a)(1). Section 552.117 also encompasses personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (stating that section 552.117 is not applicable to mobile phone numbers paid for by governmental body and intended for official use). Whether 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). You have not indicated whether the employees whose information we have marked in the remaining documents have timely elected to keep their information confidential. The district may only withhold information under section 552.117 on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees timely elected to keep their personal information confidential, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the district must only withhold the cellular telephone numbers we have marked under section 552.117 if the employees at issue paid for their cellular telephone service with their own funds. If the employees did not make a timely election, the information may not be withheld under section 552.117(a)(1).

Section 552.137 of the Government Code 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 id.* § 552.137(a)-(c). The personal e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). We note section 552.137 does not apply to work e-mail addresses of an officer or employee of a governmental body. You do not inform us the members of the public have affirmatively consented to the release of these e-mail addresses. Therefore, the

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<sup>2</sup>The Office of the Attorney General will raise mandatory exceptions like sections 552.117 and 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless subsection (c) applies.

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with the ADA. The district must withhold the marked medical information under section 552.101 in conjunction with common-law privacy. If the employees whose information we have marked timely elected to keep their personal information confidential and the employees paid for their own cellular phone service, the district must withhold the marked information under section 552.117(a)(1). The district must withhold the marked personal e-mail addresses under section 552.137, unless subsection (c) applies. The remaining information must be released.<sup>3</sup>

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/cc

Ref: ID# 334913

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>3</sup>We note that the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a government body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.