ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 26, 2010

Mr. Fortunato G. Paredes
Attorney for Crystal City Independent School District
Escamilla, Poneck & Cruz, LLP
216 West Village Boulevard Suite 202
Laredo, Texas 78041

OR2010-07673

Dear Mr. Paredes:

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# 380862.

The Crystal City Independent School District (the "district"), which you represent, received a request for information relating to two named individuals.[1] You state that some of the requested information has been released. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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. This exception encompasses information that other statutes make

[1]You inform us that one of the named individuals is a student of the district. We note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: http://www.oag.state.tx.us/open/20060725usdoe.pdf.

confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). In this instance, the release of the Form I-9's submitted as Exhibit D would be "for purposes other than for enforcement" of the applicable federal law. A Form I-9 may only be released for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the district must withhold the Form I-9's in Exhibit D under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Medical records are confidential under section 159.002 of the MPA, which provides in part:

> (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.
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> (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.
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> (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(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). Medical records must be released on the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990).

You contend that the information submitted as Exhibit B is confidential under the MPA. We note that the information at issue includes a "medical examination report" for a commercial driver fitness determination performed pursuant to section 391.43 of title 49 of the Code of Federal Regulations. We also note that the medical examination report itself, which we have

marked, was signed by a medical examiner. You do not indicate, however, and the report itself does not reflect whether the medical examiner concerned was a physician or a person acting under the supervision of a physician. *See* 49 C.F.R. § 390.5 (defining "medical examiner" for purposes of 49 C.F.R. § 391.43).[2] Therefore, we are unable to determine whether the MPA is applicable to any of the information in Exhibit B. Nevertheless, we will rule conditionally. If the marked medical examination report was created by a physician or by a person acting under the supervision of a physician, then we agree that the marked report is confidential under section 159.002 of the MPA. In that event, the report may only be released if the district receives the required written consent under sections 159.004 and 159.005 of the MPA. But if it was not created by a physician or by a person acting under a physician's supervision, then the report is not confidential under section 159.002 of the MPA and may not be withheld from the requestor on that basis. In either event, we find that the remaining information in Exhibit B does not consist of a communication between a physician and a patient; a record of the identity, diagnosis, evaluation, or treatment of a patient; or information obtained from such a communication or record. *See* Occ. Code § 159.002(a)-(c). We therefore conclude that the district may not withhold any of the remaining information in Exhibit B on the basis of section 159.002 of the MPA.

In the event that the MPA is not applicable to the marked report in Exhibit B, we will determine whether any of the information in the report is protected by common-law privacy under section 552.101 of the Government Code. Section 552.101 also encompasses common-law privacy, which 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 determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private).

We find that some of the information in Exhibit B is intimate or embarrassing and not a matter of legitimate public interest. We have marked that information. If the MPA is not applicable to Exhibit B, then the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current

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[2]Section 390.5 provides that "'[m]edical examiner ' means a person who is licensed, certified, and/or registered, in accordance with applicable State law regulations, to perform physical examinations. The term *includes but is not limited to*, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic." (Emphasis added.)

or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, .117. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential.

The district claims section 552.117(a)(1) for information relating to an employee in the documents submitted as Exhibit C. We note that section 552.117(a)(1) may also be applicable to information in Exhibit B, if that information is not subject to the MPA, and information in Exhibit E. We have marked the information that the district may be required to withhold under this exception. To the extent that it consists of the employee's home address and home telephone number, the marked information must be withheld under section 552.117(a)(1), along with the employee's social security number, if he timely requested confidentiality for those types of information under section 552.024.[3]

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). The district claims section 552.130 for Texas driver's license information in Exhibit E. We note that section 552.130 also encompasses information in Exhibit B, in the event the MPA is not applicable. We have marked the information in Exhibits B and E that must be withheld under section 552.130.[4]

In summary: (1) the Form I-9's in Exhibit D must be withheld under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (2) if the marked medical examination report in Exhibit B was created by a physician or by a person acting under the supervision of a physician, then the report is confidential under section 159.002 of the MPA and may only be released if the district receives the required written consent under sections 159.004 and 159.005 of the MPA; (3) if the MPA is not applicable to the medical examination report, then the district must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction

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[3]Although you state that Exhibit D reflects that the employee concerned requested confidentiality for his home address and telephone number, the submitted documents do not contain any evidence of such an election.

[4]We note that this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130, without the necessity of requesting an attorney general decision.

with common-law privacy; (4) to the extent the information we have marked in Exhibits B, C, and E consists of the employee's home address and home telephone number, the marked information and the employee's social security number must be withheld under section 552.117(a)(1) of the Government Code if he timely requested confidentiality for those types of information under section 552.024 of the Government Code; and (5) the marked Texas driver's license information in Exhibits B and E must be withheld under section 552.130 of the Government Code.[5] The rest of the submitted information must be released.

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, 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, toll free, at (888) 672-6787.

Sincerely,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rl

Ref: ID# 380862

Enc: Submitted documents

cc: Requestor
(w/o enclosures)

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[5]In the event that the employee did not timely request confidentiality for his social security number under section 552.024, we note that section 552.147(b) of the Government Code authorizes a governmental 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.