



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2010

Ms. Kelly J. Shook
Schwartz & Eichelbaum
Wardell Mehl and Hansen, P.C.
4201 W. Parmer Lane, Suite A-100
Austin, Texas 78727

ATTORNEY GENERAL OF TEXAS

OR2010-09973

Dear Ms. Shook:

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# 385703.

The Mission Consolidated Independent School District (the "district"), which you represent, received a request for any e-mails received during a specified time period by district employees that relate to a named individual and the possibility the named individual has a criminal history. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor, who represents the named individual. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides in pertinent part:

(a) Except as provided by Section 261.203, 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, audiotapes, videotapes, 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). You assert the information in Exhibit B is confidential under section 261.201 of the Family Code because that information relates to a report of suspected child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). Furthermore, you do not explain, nor can we discern from our review, that the information at issue constitutes a report of alleged or suspected abuse or neglect made under chapter 261 or that this information was used or developed in an investigation under chapter 261. *See id.* § 261.201. Consequently, the district may not withhold the submitted information on the basis of section 261.201 in conjunction with section 552.101 of the Government Code.

Section 552.101 also encompasses the common-law right of privacy. Common-law privacy protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types 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, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find portions of the submitted information pertaining to an individual other than the requestor’s client, which we have marked, are highly intimate or embarrassing and not of legitimate concern to the public. The district must withhold this information under section 552.101 in conjunction with common-law privacy. However, none of the remaining information is highly intimate or embarrassing information of no legitimate public concern. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

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* Gov’t Code

§ 552.137(a)-(c). We have marked e-mail addresses within the submitted information that are subject to section 552.137(a). Accordingly, the district must withhold the e-mail addresses we have marked pursuant to section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure.¹

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must also withhold the e-mail addresses we have marked pursuant to section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. The remaining 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,



Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 385703

Enc. Submitted documents

¹We note 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 e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.