



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2010

Ms. Susan K. Bohn  
General Counsel  
Lake Travis Independent School District  
3322 Ranch Road 620 South  
Austin, Texas 78738

OR2010-14148

Dear Ms. Bohn:

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# 393798.

The Lake Travis Independent School District (the "district") received a request for all documents responsive to a public information request made by a named district employee. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by an attorney who represents the district employee. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

Initially, you inform us that a portion of the submitted information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2010-09999 (2010). In that ruling, we determined that the district may withhold the information submitted behind Tabs 2 and 3 under section 552.107(1) of the Government Code. As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the district may rely on Open Records Letter No. 2010-09999 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling. *See Open Records Decision No. 673 (2001)* (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely

same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).<sup>1</sup>

We now address your arguments against disclosure of the remaining information. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as the Family Medical Leave Act (the "FMLA"), section 2654 of title 29 of the United States Code. Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states that

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the [Americans with Disabilities Act (the "ADA")], as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements[], except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. §: 825.500(g). We have marked information that is confidential under section 825.500 of title 29 of the Code of Federal Regulations. We find that none of the release provisions of the FMLA apply to this information. Thus, we conclude that the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FMLA.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

The remaining information also contains medical records that are subject to the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which is encompassed by section 552.101 of the Government Code. *See* Occ. Code § 151.001-165.160. Section 159.002 of the MPA provides in relevant part:

(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.

*Id.* § 159.002(b), (c). Medical records must be released on the patient's signed, written consent, provided that the consent specifies the (1) information to be covered by the release, (2) reasons or purposes for the release, and (3) person to whom the information is to be released. *See id.* §§ 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). We have marked medical records in the submitted information that may be released only in accordance with the MPA. *See* Open Records Decision No. 598 (1991).

Section 552.101 also encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or 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. *See id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses is excepted from public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find a portion of the remaining information is highly intimate or embarrassing and of no legitimate concern to the public. Therefore, the district must withhold the information we marked under section 552.101 in conjunction with common-law privacy. However, we find portions of the remaining information are not highly intimate or embarrassing. In addition, because a portion of the information you have marked pertains to a workers' compensation claim, there is a legitimate public interest in this information. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of

financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 423 at 2 (1984) (scope of public employee privacy is narrow). Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

We note the remaining information contains employees' personal information. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security number, 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.<sup>2</sup>

Gov't Code § 552.117. We note section 552.117 is also applicable to 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) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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). To the extent the information we have marked pertains to district employees who timely elected confidentiality under section 552.024, the district must withhold the marked information under section 552.117(a)(1). *See* Open Records Decision No. 674 (2001) (section 552.117 does not apply to applicants for governmental employment or appointment, but to employees or appointees hired by a governmental body). However, the district may only withhold the marked cellular telephone numbers if the numbers are not paid for by the district.

In summary, the district may rely on Open Records Letter No. 2010-09999 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FMLA. The marked medical records are subject to the MPA and must be withheld under section 552.101. The district must withhold the information we marked under section 552.101 in conjunction with common-law privacy. The district must withhold the information we marked under section 552.117 to the extent the information pertains to district employees who timely elected confidentiality under section 552.024. However, the district may only withhold the marked cellular telephone numbers if the numbers are not paid for by the district. The remaining information must be released.

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<sup>2</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.117, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/em

Ref: ID# 393798

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)