



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 30, 2010

Mr. Ronn P. Garcia  
Underwood Law Firm  
For Olton Independent School District  
P.O. Box 16197  
Lubbock, Texas 79490

OR2010-19504

Dear Mr. Garcia:

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# 404701.

The Olton Independent School District (the "district"), which you represent, received two requests from the same individual for (1) three categories of information related to a "No Trespass" order approved by the district's board of trustees, and (2) four categories of information related to complaints involving a named individual. You state some of the responsive information has been withheld in its entirety pursuant to the Family Educational Rights and Privacy Act ("FERPA").<sup>1</sup> You state most of the information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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

---

<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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>.

Code § 552.101. Section 552.101 encompasses the doctrines of common-law privacy and constitutional privacy. The doctrine of 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. You state the request relates to complaints involving an elected official. This office has found the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 542 at 5 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Accordingly, we find that allegations of an elected official engaging in public misconduct is of tremendous legitimate public concern. Therefore, information relating to such allegations is not protected by common-law privacy, even though such information could be considered highly intimate or embarrassing. *See Indus. Found.*, 540 S.W.2d 668. Thus, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Constitutional privacy consists of two inter-related types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599–600 (1977); Open Records Decision Nos. 600 at 3–5 (1992), 478 at 4 (1987), 455 at 3–7 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. ORD 455 at 4. The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* at 7. The scope of information protected by constitutional privacy is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find you have failed to demonstrate how the submitted information falls within any of the protected "zones of privacy." Further, we find the public's right to know information about the conduct of an elected official outweighs any privacy interest that may be implicated in this case. Accordingly, the submitted information may not be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

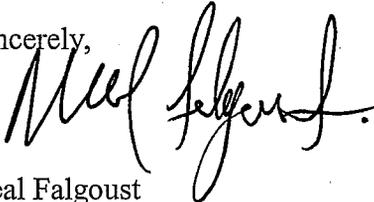
Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or

registration issued by an agency of this state.<sup>2</sup> See Gov't Code § 552.130(a)(1), (2). We agree the Texas license plate number you have marked must be withheld under section 552.130 of the Government Code. 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](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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/dls

Ref: ID# 404701

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>2</sup>We note this office has issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.