



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

Mr. Humberto Aguilera
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2011-06470

Dear Mr. Aguilera:

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# 417085.

The Harlandale Independent School District (the "district"), which you represent, received a request for copies of four categories of information pertaining to the requestor's client. You state the district has released most of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 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 Code § 552.101. This section encompasses information that other statutes make confidential, such as section 402.083 of the Labor Code. Section 402.083(a) states "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation of the Texas Department of Insurance (the "division")] except as provided by this subtitle or other law." Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 (1989); *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) to information

other parties obtain from division files). Accordingly, information in the possession of the district that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although you assert Exhibit A is confidential pursuant to section 402.083, you provide no representation, and the records contained in Exhibit A do not reflect, the district received them from the division. Therefore, you have failed to demonstrate the applicability of section 402.083 of the Labor Code to Exhibit A and the district may not withhold it under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which 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 seek to withhold Exhibit A under common-law privacy because it reveals certain medical information of a district employee. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Although common-law privacy protects some medical information, it does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). In this instance, the medical information in Exhibit A concerns an injury the employee sustained during the scope of employment. Furthermore, the records in Exhibit A were submitted by the employee to support her workers' compensation claim. This office has stated in numerous opinions that the public has a legitimate public interest in the conduct of public employees and in the details of financial transactions between an employee and a governmental body. *See* Open Record Decision Nos. 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 423 at 2 (1984) (scope of public employee privacy is narrow); *see also* 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), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Thus, we find there is a legitimate public interest in the medical information in Exhibit A. Accordingly, no portion of Exhibit A may be withheld pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You raise section 552.102(a) of the Government Code for the birth dates of district employees contained in Exhibit B. We note that Exhibit A also contains a district employee's birth date. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll

database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). However, section 552.102(a) does not protect an employee's age. Accordingly, the birth dates we marked in Exhibits A and B must be withheld under section 552.102(a) of the Government Code.

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 or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1).¹ We note that an individual's post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 4 (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home). 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 information. *See* Open Record 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 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 information. Exhibits A and B contain a district employee's home telephone numbers, and Exhibit A contains her social security number. Accordingly, if the employee did not timely elect confidentiality, her personal information may not be withheld under section 552.117(a)(1) of the Government Code. If, however, she timely elected to keep this information confidential, the district must withhold the information we marked in Exhibits A and B under section 552.117(a)(1).²

Exhibit B contains a Texas driver's license number. Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2).³ Therefore, the district must withhold the Texas driver's license number we marked in Exhibit B under section 552.130 of the Government Code.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²If the employee did not timely elect confidentiality under section 552.024, the district may withhold her social security number under section 552.147(b) of the Government Code. Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. Gov't Code § 552.147(b).

³We note this office 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.

Exhibit A contains a district employee's insurance identification number and group number. Section 552.136 of the Government Code provides "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find the district must withhold the insurance identification number and group number we marked in Exhibit A under section 552.136 of the Government Code.

Finally, we note the district redacted information in Exhibit B under sections 552.102, 552.117, and 552.130 of the Government Code. However, these sections protect personal privacy. In this instance, the requestor is the attorney for the individual whose information has been redacted. Because the requestor is the individual's authorized representative, he has a special right of access to his client's private information under section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide her with information concerning herself). Therefore, the redacted information may not be withheld from the requestor and must be released with the remaining information.

In summary, the birth dates we marked in Exhibits A and B must be withheld under section 552.102(a) of the Government Code. The district must withhold the Texas driver's license number we marked in Exhibit B under section 552.130 of the Government Code. The district must withhold the insurance identification number and group number we marked in Exhibit A under section 552.136 of the Government Code. Finally, if the employee did not timely elect confidentiality under section 552.024 of the Government Code, her personal information may not be withheld under section 552.117(a)(1) of the Government Code. If, however, she timely elected to keep this information confidential, the district must withhold the information we marked in Exhibits A and B under section 552.117(a)(1). 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 417085

Enc. Submitted documents

c: Requestor
(w/o enclosures)