



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 30, 2012

Ms. Kelley L. Kalchthaler  
Walsh, Anderson, Brown, Gallegos and Green, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2012-01508

Dear Ms. Kalchthaler:

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# 443950.

The Palacios Independent School District (the "district"), which you represent, received a request for information concerning a specified grievance, including e-mails involving a named individual and the requestor.<sup>1</sup> You state the district has released some of the information to the requestor. You explain the district will redact information subject to section 552.117 of the Government Code pursuant to section 552.024 of the Government Code.<sup>2</sup> You also explain the district has redacted certain student information pursuant to the Family Educational Rights and Privacy Act ("FERPA"),<sup>3</sup> 20 U.S.C. § 1232g. You claim the

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<sup>1</sup>We note the district sought and received clarification of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>Section 552.024(c) of the Government Code permits a governmental body to redact information subject to section 552.117 of the Government Code without requesting an attorney general decision, if an employee or official or former employee or official chooses not to allow public access to the information in a timely manner. *See* Gov't Code § 552.024(c)

<sup>3</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>.

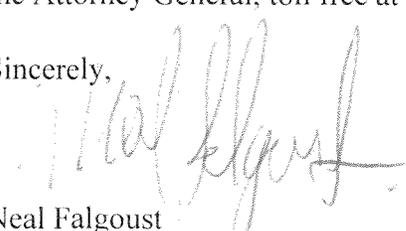
submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. Section 552.101 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. This office has found certain types of medical information indicating disabilities or specific illnesses are protected 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 the information we have marked is highly intimate or embarrassing and of no legitimate public interest. The district must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, the remaining information you seek to withhold is not highly intimate or embarrassing. Accordingly, the district may not withhold the remaining information under section 552.101 of the Government Code on that basis. As you claim no further exceptions, 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/agn

Ref: ID# 443950

Enc. Submitted documents

c: Requestor  
(w/o enclosures)