



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2012

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.  
P.O. Box 1977  
El Paso, Texas 79999-1977

OR2012-14704

Dear Mr. Safi:

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# 465057 (EPISD ORR# 2012.195).

The El Paso Independent School District (the "district"), which you represent, received a request for documents provided to the district on behalf of the El Paso Federation of Teachers and Support Personnel (the "federation"), all requests for information made by the federation, and any documentation supplied by the district to the federation in response to any such requests. You do not take a position as to whether the submitted information is excepted from disclosure under the Act. However, you state, and provide documentation showing, you notified the federation of the district's receipt of the request for information and of its right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). You inform us the federation objects to release of some of the requested information under sections 552.101 and 552.135 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information. We have also considered comments submitted by the requestor. *See id.*

Initially, we note the district has not submitted information responsive to the request for requests for information made by the federation and any documentation supplied by the district to the federation in response to any such requests. We assume, to the extent any additional responsive information existed when the district received the request for

information, the district has released it to the requestor. If not, then the district must do so immediately. *See id.* §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

We next note the federation has not submitted any comments to this office objecting to the release of the submitted information. *See Gov't Code* § 552.304. Nevertheless, the district and the requestor inform us the federation objects to release of the requested information under section 552.101 of the Government Code in conjunction with common-law privacy and the informer's privilege, as well as under section 552.135 of the Government Code. However, the common-law informer's privilege is a discretionary exception that protects only the interests of a governmental body, as distinguished from exceptions that are intended to protect the interests of third parties. *See Open Records Decision No. 549 at 6 (1990)* (purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect third party); *see also Open Records Decision No. 522 (1989)* (discretionary exceptions in general). The district does not assert the common-law informer's privilege. Therefore, the district may not withhold any of the information at issue on that ground. However, because common-law privacy and section 552.135 are mandatory exceptions to disclosure, we will consider their applicability to 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." This section encompasses the doctrine of common-law privacy, which protects information that (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). 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. *Id.* at 683. Upon review, we find none of the submitted information is highly intimate or embarrassing. Therefore, the submitted information is not confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

Section 552.135 of the Government Code provides the following:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].
- (c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). As noted above, the district does not assert any of the requested information is excepted from release under section 552.135. Thus, we conclude none of the submitted information is excepted from disclosure on that ground.

Section 552.117(a)(1) of the Government Code may be applicable to some of the submitted information.<sup>1</sup> Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, 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. *Id.* § 552.117(a)(1). Whether 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). Therefore, the district may only withhold information under

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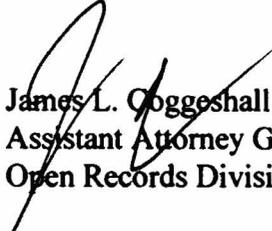
<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. We have marked information that the district must withhold if section 552.117(a)(1) applies. Thus, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employees at issue timely elected to withhold that information, but must release the remaining information to the requestor.

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,



James L. Oggeshall  
Assistant Attorney General  
Open Records Division

JLC/tch

Ref: ID# 465057

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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(w/o enclosures)