



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 18, 2013

Mr. Miles J. LeBlanc  
Assistant General Counsel  
Houston Independent School District  
Hattie Mae White Educational Support Center  
4400 West 18<sup>th</sup> Street  
Houston, Texas 77092

OR2013-01142

Dear Mr. LeBlanc:

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# 476663 (District Nos. B091212, B101812, B101812b).

The Houston Independent School District (the "district") received three requests from the same requestor for all employment records for a specified employee, all open and closed complaints filed against a named senior IT manager, all documents and information acquired by the district's Equal Employment Opportunity ("EEO") Office, and any other office, in regards to a specified EEO case, copies of current and recent on file applications and resumes of three specified individuals for the district project manager position, all communications the district EEO office sent to witnesses listed in requestor's EEO complaint, all complaints filed by employees (full-time, part-time, or contract) at the district's Hattie Mae White Building for workplace violence, bullying, hostile work environment, discrimination/racism, and retaliation in the past two years, and all open and closed complaints filed against the district's IT department in the past two years, including EEO complaint forms and related documentation. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered the requestor's comments. *See Gov't Code § 552.304* (interested party may submit written comments regarding availability of requested information).

Initially, we must address the district's obligations under the Act. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You inform us the district received the first request for information on September 14, 2012. Thus, the district's ten-business-day deadline under section 552.301(b) was September 28, 2012, and the district's fifteen-business-day deadline under section 552.301(e) was October 5, 2012. We note you did not request a ruling from this office until November 5, 2012 and did not submit the required documents to this office until November 12, 2012. However, you state that the district sought and received clarification from the requestor on October 17, 2012. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request). Thus, we understand you to claim the deadlines for the first request should be reset from the date the district received the clarification. However, we note the district did not request clarification of the request until after the ten-business-day deadline had passed. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documents were not reset and must be measured from the date the district received the first request for information on September 14, 2012. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Consequently, we find the district failed to comply with the procedural requirements mandated by section 552.301 with respect to the first request.

Next, the requestor contends the district failed to comply with the procedural requirements of the Act in regards to the second and third requests. Pursuant to section 552.301(d) of the Government Code, a governmental body must provide the requestor with (1) a written statement the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. Gov't Code § 552.301(d). Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments to the attorney general under subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business days of receiving the request for information. *Id.* § 552.301(e-1). The requestor asserts that she has not received any correspondence from the district regarding the second and third requests. The determination of whether a governmental body mailed its notice of the request for a decision or a copy of

the written comments to the requestor is a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a fact issue is not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or upon those facts that are discernible from the documents submitted for our inspection. *See* ORD 552 at 4. Upon review, we find the district's brief to this office contains a notation the requestor was copied on the brief. Thus, based on the fact the requestor was copied in the district's brief, we conclude the district complied with the requirements of sections 552.301(d) and 552.301(e-1) of the Government Code in regards to the second and third requests.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Therefore, we will address the district's claims under sections 552.101, 552.102, 552.117, and 552.135, which can provide compelling reasons for non-disclosure.

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 exception encompasses information other statutes make confidential. Section 2000e-5 of title 42 of the United States Code provides in relevant part:

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved . . . alleging that an employer . . . has engaged in an unlawful employment practice, the [EEOC] shall serve a notice of the charge . . . and shall make an investigation thereof. . . . Charges shall not be made public by the [EEOC]. . . .

42 U.S.C. § 2000e-5(b) (emphasis added). This office has held that section 2000e-5 only restricts disclosure by those who enforce the Equal Employment Opportunity Act and does not make information in the hands of the state reporting agency confidential. *See, e.g.*, Open Records Decision Nos. 245 at 2 (1980) (City of Rio Hondo may not withhold information under section 2000e-5 or 2000e-7 of title 42 of the United States Code), 155 at 2 (1977) (City of Austin may not withhold information under section 2000e-5), 59 at 2 (1974) (Dallas County may not withhold information under section 2000e-8); *see also* *Whitaker v. Carney*, 778 F. 2d 216 (1985) (title VII proscribes release of information only when held by EEOC or EEOC employees, and not when held by employer). You claim the submitted EEO complaints and reports are confidential under section 2000e-5 of title 42 of the United States Code. However, the submitted information is maintained by the district and not by

employees of the EEOC; therefore, we conclude the district may not withhold the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 2000e-5 of title 42 of the United States Code.

Section 552.101 encompasses the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which governs access to medical records. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the information we have marked consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created by a physician or someone under the supervision of a physician; therefore, the information we have marked is subject to the MPA and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. *See id.* at 681-82. The type 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. This office has found that 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. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found personal financial

information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any portion of the remaining information is highly intimate or embarrassing, or the information is of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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 has 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.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the district must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. However, we find none of the remaining information is subject to section 552.102(a) of the Government Code and none of it may be withheld on that basis.

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. Gov't Code § 552.117(a)(1). We note section 552.117(a)(1) encompasses a personal cellular telephone number as long as the cellular service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to numbers for cellular mobile phones installed in county officials' and employees' private vehicles and intended for official business). We also note that an individual's personal post office box number is not a "home address" for purposes of section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (legislative history makes clear that purpose of section 552.117 is to "protect public employees from being harassed at

*home*” (emphasis added) (citing House Committee on State Affairs, Bill Analysis, H.B. 1979, 69th Leg. (1985)). 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). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely elected to keep their personal information confidential pursuant to section 552.024, the district must withhold the information we have marked under section 552.117(a)(1), including the personal cellular telephone numbers if the individuals pay for their cellular telephone services with personal funds. The district may not withhold the marked information under section 552.117 if the individuals did not make timely elections to keep the information confidential or if the cellular telephone services are paid for by a governmental body.<sup>1</sup>

Section 552.135 of the Government Code. Section 552.135 provides in part:

(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].

Gov’t Code § 552.135(a)-(b). 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 the 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). Additionally, individuals who provide information in the course of an investigation, but who do not make the initial report are not informants for purposes of section 552.135 of the Government Code. Upon review, we find you have failed to demonstrate any of the submitted information identifies an informer who furnished an initial report of a violation of law for purposes of section 552.135. Thus, the district may not withhold any of the submitted information under section 552.135 of the Government Code.

Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type

---

<sup>1</sup>Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code permits a governmental body to redact a living person’s social security number without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

specifically excluded by subsection (c).<sup>2</sup> *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.<sup>3</sup>

We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *Open Records Decision No. 180 at 3 (1977)*. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see Open Records Decision No. 109 (1975)*. If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the information we have marked under section 552.102 of the Government Code. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employees whose information is at issue timely elected to keep their information confidential pursuant to section 552.024 of the Government Code, and if the individuals pay for their cellular telephone services with personal funds. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners consent to their release. The remaining information must be released, but any information protected by copyright may only be released in accordance with copyright law.<sup>4</sup> 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.

---

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

<sup>3</sup>*Open Records Decision No. 684 (2009)* is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

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,

A handwritten signature in black ink, appearing to read 'Thana Hussaini', with a long horizontal stroke extending to the right.

Thana Hussaini  
Assistant Attorney General  
Open Records Division

TH/som

Ref: ID# 476663

Enc. Submitted documents

c: Requestor  
(w/o enclosures)