



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2013

Mr. Miles J. LeBlanc
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2013-03637

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# 480293.

The Houston Independent School District (the "district") received a request for information related to Equal Employment Opportunity Commission complaints filed against two named individuals during a specified time period. You claim 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 considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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 request for information on November 27, 2012. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Thus, the district's ten-business-day deadline under section 552.301(b) was December 11, 2012, and the district's fifteen-business-day deadline under section 552.301(e) was December 18, 2012. We note the envelope in which you requested a ruling from this office and submitted the required documents to this office bears a meter mark of December 19, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the district failed to comply with the procedural requirements mandated by section 552.301.

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). The district claims sections 552.101, 552.102, 552.117, and 552.135. In addition, we note a portion of the submitted information may be subject to section 552.137 of the Government Code.¹ Therefore, we will address the applicability of sections 552.101, 552.102, 552.117, 552.135, and 552.137 of the Government Code, 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 section encompasses the common-law right to 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 met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has stated in numerous opinions the work behavior and performance of a public employee and the conditions for his or her continued employment are generally matters of legitimate public

¹The 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).

interest not protected by the common-law right of privacy. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 438 at 4 (1986) (public has legitimate interest in details of accusation of misconduct against city supervisor), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy). Similarly, the public has a legitimate interest in knowing the reasons for the dismissal of public employees and the circumstances surrounding their termination. Open Records Decision No. 444 at 6 (1986); *see* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). However, this office has found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision Nos. 470 (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

Upon review, we agree portions of the submitted information, which we have marked, are highly intimate or embarrassing and of no legitimate public concern. Thus, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.² However, we find the remaining information is either not highly intimate and embarrassing or is of legitimate public interest. Accordingly, none of the remaining information may be withheld under section 552.101 on the basis of 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 date 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). 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

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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). 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. The remaining information you have marked is not subject to section 552.117, and the district may not withhold it on that basis.

Section 552.135 of the Government Code provides in part:

(a) "Informer" means a student or a 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 remaining 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 remaining information under section 552.135 of the Government Code.

Section 552.137 of the Government Code 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 specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure.³

³Open 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.

In summary, the district must withhold the information we have marked under: (1) section 552.101 of the Government Code in conjunction with common-law privacy; (2) section 552.102(a) of the Government Code; (3) section 552.117(a)(1) of the Government Code, if the individuals whose information is at issue timely elected to keep their personal information confidential pursuant to section 552.024 of the Government Code; and (4) the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. The district must release the remaining information.

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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 480293

Enc. Submitted documents

c: Requestor
(w/o enclosures)