



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 20, 2013

Ms. Elisabeth D. Nelson  
For Lewisville Independent School District  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2013-04623

Dear Ms. Nelson:

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# 482542.

The Lewisville Independent School District (the "district"), which you represent, received a request for all e-mails between the requestor and a named individual and specified grievances from a specified time period. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.137 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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, such that its release 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 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. The type of information considered highly 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. Common-law privacy also protects certain types of information relating to an investigation of alleged sexual harassment in the workplace. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (public had legitimate interest in

affidavit of person under investigation and conclusions of board of inquiry, but not in identities of individual witnesses and details of their personal statements beyond information contained in documents ordered released). We note, however, the public generally has a legitimate interest in information pertaining to the work conduct and job performance of public employees. *See, e.g.*, Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of governmental employees), 423 at 2 (1984) (scope of public employee privacy is narrow), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Upon review, we have marked the information that is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district must withhold this information under section 552.101 in conjunction with common-law privacy.<sup>1</sup> However, you have failed to demonstrate how the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any of the remaining information under section 552.101 on this basis.

Section 552.117 of the Government Code 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 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 the information under section 552.117 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. To the extent the employee whose information is at issue timely elected to keep such information confidential under section 552.024, the district must withhold the information you have marked, in addition to the information we have marked, under section 552.117 of the Government Code. However, if the employee did not make timely elections, the district may not withhold the marked information on this basis.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the employee whose information is at issue timely elected confidentiality, the district must withhold the information you have marked, in addition to the information we have marked, under section 552.117 of the Government Code. The remaining information must be released.

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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](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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 482542

Enc. Submitted documents

c: Requestor  
(w/o enclosures)