



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 29, 2013

Mr. Orlando "Jay" Juarez, Jr.
Counsel for the United Independent School District
Escamilla, Poneck & Cruz L.L.P.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2013-06996

Dear Mr. Juarez:

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# 485725.

The United Independent School District (the "district"), which you represent, received a request for information pertaining to district employees placed on administrative leave during a specified school year, including complaints, investigations, reassignments/demotions, reprimands, and disciplinary memos. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, and 552.135 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 of the Government Code encompasses section 611.002, which governs the public availability of mental health records and provides:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see id.* § 611.001 (defining "patient" and "professional"). Upon review, we find the information we have marked in Exhibit D consists of mental health records. Therefore, the district must withhold the information we have marked under section 552.101 in conjunction with section 611.002 of the Health and Safety Code. However, we find none of the remaining information in Exhibit D constitutes mental health records or information obtained from mental health records for the purposes of section 611.002. Thus, no portion of the remaining information in Exhibit D may be withheld under section 552.101 on this basis.

Section 552.101 also encompasses information protected by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *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 that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. Upon review, we find none of the remaining information in Exhibit D constitutes medical records or information obtained from medical records. Accordingly, the district may not withhold any of the remaining information under section 552.101 in conjunction with the MPA.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See 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 types of information considered intimate and 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. *See id.* at 683. This office has found 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). However, this office has found information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest, and, therefore, is generally not protected from disclosure under common-law privacy. *See, e.g.*, Open Records Decision Nos. 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 455 (public employee's job performance or abilities generally not protected by privacy), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of governmental employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find a portion of the remaining information, which we have marked, is highly intimate or embarrassing information and is of no legitimate public concern. Accordingly, the district must withhold the information we have marked in Exhibit D under section 552.101 in conjunction with common-law privacy.

We note you have redacted portions of Exhibit B under section 552.117(a)(1) of the Government Code, as permitted by section 552.024(c) of the Government Code.¹ You also raise section 552.117(a)(1) for portions of Exhibit C. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt

¹ Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

of the request for the information. You state the employees whose information is at issue in Exhibit C timely elected to keep their information confidential. Thus, the district must withhold the information we have marked under section 552.117(a)(1). However, we find none of the remaining information you have marked is subject to section 552.117. Therefore, the district may not withhold any of the remaining information under section 552.117 of the Government Code.

You claim Exhibit B is excepted from disclosure under 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). We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. Additionally, individuals who provide information in the course of an investigation, but do not make the initial report are not informants for purposes of section 552.135 of the Government Code. You state the information in Exhibit B contains a statement made by and the identity of an informer who reported a possible violation of section 21.15 of the Texas Penal Code, which you inform us is a state jail felony. We understand this individual has not consented to public disclosure of his identity. Thus, we conclude the district must withhold Exhibit B under section 552.135 of the Government Code.

In summary, the district must withhold the information we have marked section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code and common-law privacy. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold Exhibit B under section 552.135 of the Government Code. 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, 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 that reads "Kathleen J. Santos". The signature is written in a cursive style with a large, stylized "K" and "S".

Kathleen J. Santos
Assistant Attorney General
Open Records Division

KJS/som

Ref: ID# 485725

Enc. Submitted documents

c: Requestor
(w/o enclosures)