



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 29, 2019

Ms. Carrie Galatas
General Counsel
Conroe Independent School District
3205 West Davis Street
Conroe, Texas 77304-2098

OR2019-14229

Dear Ms. Galatas:

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# 767783.

The Conroe Independent School District (the "district") received a request for personnel records pertaining to four named district employees. You state the district is releasing some information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district has redacted portions of the responsive information. We understand the district has redacted information subject to section 552.117(a)(1) of the

¹Although you do not raise sections 552.102, 552.117, 552.130, or 552.147 of the Government Code in your brief to our office, we understand you to raise these exceptions based on your redactions.

Government Code pursuant to section 552.024(c) of the Government Code, motor vehicle record information pursuant to section 552.130(c) of the Government Code, and social security numbers of district employees pursuant to section 552.147(b) of the Government Code.² However, the district has also redacted additional information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov't Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of the records indicate, the district has been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); *see also* Open Records Decision 673 (2000). As such, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of some of the additional redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling with respect to this information. However, we are unable to discern the nature of the remaining redacted information. Consequently, the district has failed to comply with section 552.301 of the Government Code as to this information, and this information is presumed public under section 552.302 of the Government Code. Accordingly, the district must release this redacted information, which we have marked for release, pursuant to section 552.302 of the Government Code.

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 information made confidential by other statutes, such as the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant 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.

²Section 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. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

(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.

Occ. Code. § 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; Open Records Decision No. 598 (1991). 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. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have also found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990).

Upon review, we find the information we marked constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that was created or is maintained by a physician. Accordingly, the district must withhold this information under section 552.101 of the Government Code in conjunction with the MPA.³ In addition, we note some of the remaining information, which we marked, was created by a nurse. The district must withhold these documents under section 552.101 of the Government Code in conjunction with the MPA only if they were created under the supervision of a physician, or if they contain information taken directly from records created by or under the supervision of a physician. If the documents created by a nurse were not created under the supervision of a physician, or if they do not contain information taken directly from records created by or under the supervision of a physician, they are not subject to the MPA and the district may not withhold them under section 552.101 on that basis. However, we find none of the remaining information constitutes medical records or information obtained from medical records subject to section 159.002 and, thus, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides:

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act], unless the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057.

Educ. Code § 21.048(c-1). You assert some of the remaining information is confidential under section 21.048(c-1) of the Education Code. Upon review, we find the information we marked reflects the results of examinations administered under section 21.048 of the Education Code. We have no indication section 21.057 of the Education Code is applicable in this instance. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. However, we find you have failed to demonstrate any of the remaining information at issue is confidential under section 21.048(c-1). Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also 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.*, 520 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683; *see also* Open Records Decision No. 659 at 5 (1999). This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the supreme court in *Industrial Foundation*. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.⁴ However, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the district may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses the Americans with Disabilities Act of 1990 (the "ADA"). *See* 42 U.S.C. §§ 12101 *et seq.* Title I of the ADA provides that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. Information obtained in the course of a "fitness for duty examination" conducted to determine whether an employee is still able to perform the essential functions of his or her job is to be treated as a confidential medical

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

record as well. *See* 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). Furthermore, the federal Equal Employment Opportunity Commission (the “EEOC”) has determined that medical information for the purposes of the ADA includes “specific information about an individual’s disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual.” *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Federal regulations define “disability” for the purposes of the ADA as “(i) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (ii) a record of such an impairment; or (iii) [b]eing regarded as having such an impairment[.]” 29 C.F.R. § 1630.2(g)(1). The regulations further provide that physical or mental impairment means: (1) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. *See id.* § 1630.2(h). Upon review, we find you have failed to demonstrate the ADA is applicable to any portion of the remaining information. Accordingly, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with the ADA.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential and is not subject to disclosure under [the Act].” Educ. Code § 21.355(a). The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we concluded a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See id.* at 4. Upon review, we find you have failed to demonstrate any of the remaining information consists of documents evaluating the performance of a teacher for purposes of section 21.355. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). We note, however, this exception further provides that “the degree obtained or the curriculum on a transcript in the personnel

file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the submitted university transcripts, which we marked, under section 552.102(b) of the Government Code. However, upon review, we find you have failed to demonstrate the applicability of section 552.102(b) of the Government Code to the remaining information you redacted, and the district may not withhold this information on that basis.

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 employees’ dates of birth you redacted and the additional dates of birth we marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, 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, except as provided by section 552.024(a-1). *See* Gov’t Code § 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, a “school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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 be withheld under section 552.117(a)(1) only 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 of the request for the information. Accordingly, if the information you redacted and the additional information we marked pertains to an employee who timely requested confidentiality under section 552.024 of the Government Code, then the district must withhold the information at issue under section 552.117(a)(1) of the Government Code; however, the district may only withhold the cellular telephone numbers at issue if the cellular service is not paid for by a governmental body. If the information you redacted and we marked does not pertain to an employee who timely requested confidentiality under section 552.024 of the Government Code, then the

district may not withhold this information under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the district must withhold the motor vehicle record information you redacted and we marked under section 552.130 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). Section 552.137 does not apply to an institutional e-mail address or an e-mail address maintained by a governmental entity for one of its officials or employees. *See id.* § 552.137(c). Accordingly, except for the e-mail addresses we marked for release, the district must withhold the personal e-mail addresses you marked and the additional e-mail address we marked under section 552.137 of the Government Code, unless the respective owners affirmatively consent to their public disclosure.

Section 552.147(a-1) of the Government Code provides, "[t]he social security number of an employee of a school district in the custody of the district is confidential." *Id.* § 552.147(a-1). Thus, section 552.147(a-1) makes the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *Id.* § 552.024(a-1) (school district may not require employee or former employee of district to choose whether to allow public access to employee's or former employee's social security number). Reading sections 552.024(a-1) and 552.147(a-1) together, we conclude section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Accordingly, the district must withhold the social security numbers you redacted and we marked under section 552.147(a-1) of the Government Code.

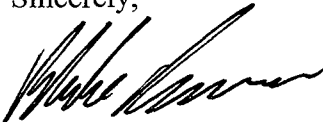
In summary, the district must release the redacted information we are unable to discern, which we marked for release, pursuant to section 552.302 of the Government Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with the MPA; however, the district must withhold the documents created by a nurse under the MPA only if they were created under the supervision of a physician, or if they contain information taken directly from records created by or under the supervision of a physician. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the employee's name, courses taken, and degrees obtained, the district must

withhold the university transcripts we marked under section 552.102(b) of the Government Code. The district must withhold the employees' dates of birth you redacted and the additional dates of birth we marked under section 552.102(a) of the Government Code. To the extent the information you redacted and the additional information we marked pertains to an employee who timely requested confidentiality under section 552.024 of the Government Code, the district must withhold this information under section 552.117(a)(1) of the Government Code; however, the district may only withhold the cellular telephone numbers at issue if the cellular service is not paid for by a governmental body. The district must withhold the motor vehicle record information you redacted and we marked under section 552.130 of the Government Code. With the exception of the e-mail addresses we marked for release, the district must withhold the personal e-mail addresses you marked and the additional e-mail address we marked under section 552.137 of the Government Code, unless the respective owners affirmatively consent to their public disclosure. The district must withhold the social security numbers you redacted and we marked under section 552.147(a-1) of the Government Code. 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Blake Brennan
Attorney
Open Records Division

BB/gw

Ref: ID# 767783

Enc. Submitted documents

c: Requestor
(w/o enclosures)