



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 14, 2019

Mr. Mike Leasor
Counsel for Eagle Mountain-Saginaw Independent School District
Leasor Crass, P.C.
302 West Broad Street
Mansfield, Texas 76063

OR2019-16140

Dear Mr. Leasor:

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# 770879.

The Eagle Mountain-Saginaw Independent School District (the "district"), which you represent, received a request for workers' compensation claim reports and incident reports pertaining to a named individual during a specified period of time.¹ You state the district will release some information. You state the district will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).² You claim

¹We understand the district received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information is not responsive to the present request because it does not pertain to the particular time period requested by the requestor. This ruling does not address the public availability of the non-responsive information, which we have marked, and the district need not release it in response to this request.

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, 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 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We also note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions 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), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Generally, only highly intimate or embarrassing information implicating the privacy of an individual is withheld. However, in certain situations where the requestor knows the identity of the individual involved, as well as the nature of certain incidents, an entire report must be withheld to protect the individual’s privacy. Upon review, we find you have not demonstrated, and the responsive information does not reflect, this is a situation in which the responsive information must be withheld in its entirety to protect an individual’s privacy interest. Further, we find no portion of the responsive information is highly intimate or embarrassing and of no legitimate public concern, and the district may not withhold any of the responsive information under section 552.101 of the Government Code 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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex.

App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it exempts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find no portion of the responsive information is subject to section 552.102(a) of the Government Code, and the district may not withhold any of the responsive information on that basis.

You claim some of the responsive information is excepted from public disclosure under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code. Section 402.083(a) states “[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers’ Compensation of the Texas Department of Insurance (the “division”)] except as provided by this subtitle[.]” Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the division. *See* Open Records Decision No. 533 at 3-6 (1989); *see also* Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, information in the possession of the district that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although you assert the responsive information is confidential pursuant to section 402.083, you provide no representation, and the documents do not reflect, the district received these records from the division. Therefore, you have failed to demonstrate the applicability of section 402.083 to the information at issue. Consequently, the district may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code.

Section 552.101 of the Government Code also encompasses section 412.0128 of the Labor Code, which provides “[i]nformation in or derived from a worker’s compensation claim file regarding an employee is confidential and may not be disclosed by the [State Office of Risk Management (the “SORM”)] except as provided by this subchapter or other law.” Gov’t Code § 412.0128. We note the language of section 412.0128 is substantially identical to section 402.083 of the Labor Code, which is discussed above. *See id.* § 402.083(a). As noted above, this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers’ Compensation Commission, and now the division. *See* ORD 533 at 3-6; *see also* Labor Code § 402.086. Accordingly, for purposes of section 402.083(a), information that was not obtained from the division may not be withheld

on that basis. Based on this analysis, we find information in the possession of the district that was not obtained from the SORM may not be withheld on the basis of section 412.0128 of the Labor Code. Although the district asserts the responsive information is confidential pursuant to section 412.0128, the district provides no representation, and the documents do not reflect, the district received these records from the SORM. Therefore, the district has failed to demonstrate the applicability of section 412.0128 to any of the information at issue. Thus, the district may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with section 412.0128 of the Labor Code.

Section 552.117(a)(1) of the Government Code 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 or official 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. 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). We note this section does not apply to an individual’s work or office telephone number. 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 of the request for the information. You state the individual whose information is at issue has elected to keep the information at issue confidential pursuant to section 552.024 of the Government Code. Therefore, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, to the extent the telephone number at issue is a cellular telephone number, the district may only withhold it if a governmental body did not pay for the cellular telephone service. Further, we find you have failed to establish section 552.117(a)(1) is applicable to the remaining responsive information, and the district may not withhold any of the remaining responsive information under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, to the extent the telephone number at issue is a cellular telephone number, the district may only withhold it if a governmental body did

not pay for the cellular telephone service. The district must release the remaining responsive 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,



Erin Groff
Assistant Attorney General
Open Records Division

EMG/be

Ref: ID# 770879

Enc. Submitted documents

c: Requestor
(w/o enclosures)