



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 26, 2019

Ms. Priscilla de Mata  
Counsel for the Ysleta Independent School District  
Blanco Ordonez Mata & Wechsler, P.C.  
5715 Cromo Drive  
El Paso, Texas 79912

OR2019-27031

Dear Ms. de Mata:

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# 788290 (ORR# D019529-070919).

The Ysleta Independent School District (the "district"), which you represent, received a request for specified investigation reports. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of completed investigations subject to section 552.022(a)(1) of the Government Code. The district must release this information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. Although you raise section 552.103 of the Government Code for the information at issue, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental

body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, none of the information at issue may be withheld under section 552.103. However, because sections 552.101 and 552.117 of the Government Code make information confidential under the Act, we will address the applicability of these sections to the information at issue.

Section 552.101 of the Government Code excepts "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. Upon review, however, we find none of the information at issue is highly intimate or embarrassing and of no legitimate public concern, and the district may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

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. *See* Gov't Code §§ 552.117(a)(1), .024. 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 or official 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. Upon review, we find some of the submitted information may be subject to section 552.117(a)(1). Therefore, to the extent the employees whose information is at issue timely elected confidentiality under section 552.024, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employees whose information is at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).

In summary, to the extent the employees whose information is at issue timely elected confidentiality under section 552.024, the district must withhold the information we marked under section 552.117(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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Kieran Hillis  
Assistant Attorney General  
Open Records Division

KH/eb

Ref: ID# 788290

Enc. Submitted documents

c: Requestor  
(w/o enclosures)