



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 12, 2022

Mr. Vincent Harding
Assistant General Counsel
Aldine Independent School District
2520 W.W. Thorne Boulevard
Houston, Texas 77073

OR2022-27835

Dear Mr. Harding:

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# 966376.

The Aldine Independent School District (the "district") received a request for information pertaining to specified forms.¹ You state you have released some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, and 552.152 of the Government Code.² 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, 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

¹ The district states it sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request).

² As sections 552.101 and 552.117 of the Government Code provide compelling reasons to overcome the presumption of openness, we need not determine whether the district failed to comply with section 552.301 in requesting a ruling from this office. See Gov't Code § 552.301(b), (e); see also *id.* §§ 552.007, .302, .352.

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). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, we find you have not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the district may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

We note some of the remaining information is subject to section 552.1175 of the Government Code.⁴ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175. Section 552.1175 applies, in part, to “a current or former member of the United States Army, Navy, Air Force, Coast Guard, or Marine Corps, an auxiliary service of one of those branches of the armed forces, of the Texas military forces, as that term is defined by Section 437.001[.]” *Id.* § 552.1175(a)(15). We note, for purposes of section 552.1175, “family member” means a spouse, minor child, or adult child who resides in the person's home. *Cf. id.* § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). Thus, the district must withhold the information we have marked under section 552.1175(a)(15) of the Government Code if it relates to individuals subject to that section who elect to restrict access to that information in accordance with section 552.1175(b) of the Government Code.⁵ Conversely, if the individuals either are not subject to section 552.1175(a)(15) or did not elect to restrict access to the information in accordance with section 552.1175(b), then the district may not withhold this information under section 552.1175(a)(15).

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 id.* §§ 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-

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

⁴ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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, for purposes of section 552.117, “family member” means a spouse, minor child, or adult child who resides in the person’s home. *See id.* § 552.117(c) (providing that “family member” has meaning assigned by Fin. Code § 31.006(d)). 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. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code.⁶ Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold the information we have marked under section 552.117(a)(1). However, we find the remaining information does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former employee of the district, and the district may not withhold any portion of the remaining information under section 552.117(a)(1).

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 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 “(1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.” 29 C.F.R. § 1630.2(g). 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

⁶ In this instance, as our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. *See id.* § 1630.2(h). Upon review, we find the district has failed to demonstrate the ADA is applicable to any portion of the remaining information, and it may not be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information made confidential by other statutes, such as section 437.232 of the Government Code, which provides as follows:

(a) In this section, “military personnel information” means a service member’s name, home address, rank, official title, pay rate or grade, state active duty orders, deployment locations, military duty addresses, awards and decorations, length of military service, and medical records.

(b) A service member’s military personnel information is confidential and not subject to disclosure under [the Act].

Gov’t Code § 437.232. Section 437.232 is contained in subchapter E of chapter 437 of the Government Code. Chapter 437 is titled “Texas Military” and subchapter E is titled “Texas Military Forces.” Upon review, we find section 437.232 only applies to military personnel records maintained by the Texas Military Forces. *See id.* § 437.001(14) (providing “Texas military forces” for purposes of chapter 437 mean the Texas National Guard, the Texas State Guard, and any other military forces under state law). The information at issue is maintained by the district. Therefore, section 437.232 is not applicable to the information you indicated, and the district may not withhold it under section 552.101 on that ground.

The district seeks to withhold portions of the remaining information under section 552.152 of the Government Code. Section 552.152 provides,

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from [required public disclosure] if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Id. § 552.152. You represent release of some of the remaining information would subject district employees to a substantial threat of physical harm. Upon review, we find you have demonstrated release of some of the information at issue would subject the employee at issue to a substantial threat of physical harm. Therefore, the district must withhold the information we have marked under section 552.152 of the Government Code. However, we find the district has not demonstrated the release of any of the remaining information would subject an employee of the district to a substantial threat of physical harm. Thus, the district may not withhold any of the remaining information under section 552.152 of the Government Code.

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. The district

must withhold the information we have marked under section 552.1175(a)(15) of the Government Code if it relates to individuals subject to that section who elect to restrict access to that information in accordance with section 552.1175(b) of the Government Code. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the information we have marked under section 552.152 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 <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,

Colin Henry
Attorney
Open Records Division

CEH/eb

Ref: ID# 966376

Enc. Submitted documents

c: Requestor
(w/o enclosures)