



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 30, 1994

Mr. David F. Chappell
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1800 City Center Tower II
301 Commerce Street
Fort Worth, Texas 76102-4118

Mr. Ray A. Morrison
General Counsel
Legal Division
Texas Association of School Boards
P.O. Box 400
Austin, Texas 78767-0400

OR94-139

Dear Mr. Chappell and Mr. Morrison:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24572.

The Texas Association of School Boards (the "association") and the Fort Worth Independent School District (the "district") received a request for the resumes and/or applications submitted for the position of superintendent of the district.¹ You contend that portions of the requested information are excepted from required public disclosure under sections 552.024, 552.101, 552.102 and 552.117 of the Government Code.

You have submitted for our review twenty applications and four resumes. You have submitted redacted and unredacted copies of each application and resume. The type of information you have redacted includes:

¹Although the request letter submitted with your letters encompasses "any records or files that reflect the names, titles, resumes and all other professional information relating to all persons who have applied for the position of Superintendent for the Fort Worth Independent School District," Mr. Chappell states that the request was modified to include "resumes and/or applications."

1. home address and phone number of the applicant;
2. name, address and phone number of the current employer;
3. current salary;
4. benefits;
5. reasons for leaving employment;
6. occupations, addresses and phone numbers of references;
7. names, addresses, phone numbers, dates of employment and job descriptions for previous employers;
8. weight;
9. date of birth;
10. general statement of health;
11. name of state issuing credentials;
12. names of clients;
13. social security numbers; and
14. questions and answers pertaining to criminal record information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You claim that the social security numbers of the applicants are made confidential by title 42 of the United States Code, section 405(c)(2)(C)(vii)(I).

A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994) (copy enclosed); *see also* 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with the administration of any general public assistance, driver's license or motor vehicle registration law). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that

section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the district or association should ensure that the information is not confidential under this federal statute.

You also claim that the questions and answers on the applications pertaining to criminal record information are confidential under section 21.917 of the Education Code. Section 21.917 provides that:

(a) A school district shall obtain criminal history record information that relates to an applicant to whom an offer of employment is being considered by the district. A district is not required to obtain information under this section, but may do so, if the applicant was initially certified by the State Board of Education in the year preceding the date of the application.

Section 21.917 refers to information obtained from a criminal justice agency. Gov't Code § 411.097(b)(1) ("A school district is entitled to obtain from the [Department of Public Safety] criminal history records information maintained by the department that the district is required or authorized to obtain under Section 21.917, Education Code"). "Criminal history record information" is defined in the Government Code as "information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions." *Id.* § 411.082(2). Section 21.917 does not encompass the type of voluntarily disclosed information found on the applications submitted for our review. Accordingly, the questions and answers pertaining to criminal record information found on the applications are not confidential as a matter of law.

Section 552.101 also protects information implicating an individual's common-law and constitutional privacy interests. Common-law privacy protects highly intimate or embarrassing information about a person's private affairs such that its release would be highly objectionable to a reasonable person, but only if the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Most of the information at issue pertains to the qualifications of the applicants, and as such is of legitimate public interest. Open Records Decision Nos. 542 (1990) (information about the qualifications of a public employee is of legitimate concern to the public); 467 (1987) (same).

Section 552.101 protects constitutional privacy as well as common-law privacy. *Industrial Foundation*, 540 S.W.2d at 678-80. This constitutional right to privacy protects two related interests: (1) the individual interest in independence in making certain kinds of important decisions, and (2) the individual interest in avoiding disclosure of personal matters. The first interest applies to the traditional "zones of privacy." These "zones" include matters related to marriage, procreation, contraception, family

relationships, and child rearing and education. See *Paul v. Davis*, 424 U.S. 693 (1976); *Roe v. Wade*, 410 U.S. 113 (1973). None of the information at issue appears to implicate these "zones."

The second interest is somewhat broader. *Fadjo v. Coon*, 633 F.2d 1172, 1175 (5th Cir. 1981). In Open Records Decision No. 455 (1987) at 6-7, this office discussed *Fadjo* and other recent developments in federal decisions on constitutional disclosural privacy and concluded:

When these cases are read together, the following becomes apparent: (1) in addition to the freedom to make certain decisions without government interference, an individual's Fourteenth Amendment liberty interest in privacy encompasses the freedom from being required to disclose certain personal matters; (2) the term "personal matters" is nebulous, but should at least be construed as involving "the most intimate aspects of human affairs"; (3) the public disclosure of personal matters is permissible if there is a "legitimate state interest which is found to outweigh the threat to the plaintiff's privacy interest"; (4) unlike the common law privacy test articulated by the Texas Supreme Court in Industrial Foundation of the South v. Texas Industrial Accident Board, *supra*, the test for determining whether private information may be publicly divulged without violating constitutional disclosural privacy rights is a balancing test; and (5) whether the subject of the information is a public official or an "ordinary citizen" will affect the nature of his privacy rights. [Citations omitted.]

In Open Records Decision No. 455, this office ruled that each of the following categories of information are not protected by either common-law or constitutional privacy: applicants' address and phone number; social security number; educational training; names and addresses of former employer; dates of employment; kind of work performed, salary, and reasons for leaving; names, occupations, addresses, and phone numbers of references; names of friends or relatives employed by the governmental body; job performances or abilities; birth dates, height and weight, and marital status. Accordingly, none of the information listed above as items 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, or 13 may be withheld under common-law or constitutional privacy.

Although Open Records Decision No. 455 holds that information regarding an applicant's illnesses or operations and physical handicaps is protected under common-law privacy, the general statement regarding one of the applicant's health, item 10, is not highly intimate or embarrassing and may not be withheld under section 552.101. Nor may the questions and answers pertaining to criminal record information, item 14, be withheld under section 552.101 as it is of legitimate public concern.

Item 4, the benefits paid to the applicants by their current employer, is part of their compensation and is not based on an independent financial decision. As such, this information does not constitute the type of personal financial information excepted by common-law privacy and may not be withheld under section 552.101. See Open Records Decision No. 600 (1992) (discussing benefits received as part of an employee's compensation and personal financial decisions).

Section 552.102 excepts:

(a) . . . information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

(b) . . . a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under former section 3(a)(2), V.T.C.S. art. 6252-17a, was the same as that delineated in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) for former section 3(a)(1), V.T.C.S. art. 6252-17a).

Although an applicant's file constitutes a personnel file, Open Records Decision No. 361 (1983), because we have found that none of the information at issue is protected by common-law privacy, section 552.102 is also inapplicable.

Sections 552.024 and 552.117 "do not embrace the home addresses and telephone numbers of applicants for governmental employment or of private citizens." Open Records Decision No. 455 at 2. However, if in compliance with section 552.024 the three applicants who are currently district employees had indicated in writing prior to the request for information that they wished to keep their home addresses and phone numbers confidential, you must withhold those addresses and phone numbers.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/LBC/rho

Ref.: ID# 24572

Enclosures: Open Records Decision No. 622
Submitted documents

cc: Ms. Ruth M. Bond
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(w/o enclosures)