



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1998

Mr. Michael J. Currie
Henslee, Fowler, Hepworth & Schwartz, L.L.P.
800 Frost Bank Plaza
816 North Congress Avenue
Austin, Texas 78701-2443

OR98-2029

Dear Mr. Currie:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118608.

The Sabine Pass Independent School District (the "district") received a request for salary, benefit and other information pertaining to the district superintendent. You ask whether some of the "benefit" information must be withheld under Government Code sections 552.101, 552.102, and 552.117.

Government Code section 552.101 requires withholding "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within common-law privacy. Information is protected by common-law privacy protects if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it 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).

An employee's personal financial information may be excepted from required public disclosure under the common-law privacy aspect of section 552.101. While this office has found that there is generally a legitimate public interest in essential facts about financial transactions between an individual and a governmental body such that there is no common law privacy protection, Open Records Decision No. 545 (1990) held that, absent special circumstances, there is no legitimate public interest in information reflecting a public employee's decision to participate in a deferred compensation plan. Such information is thus protected from disclosure by common-law privacy. Open Records Decision No. 545 at 4-5 (1990). Similarly, Open Records Decision No. 600 (1992) found that information pertaining to a public employee's designation of insurance or retirement beneficiaries, election of

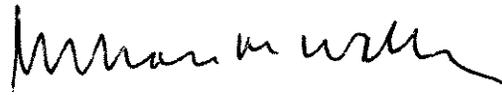
optional insurance coverage, decision to participate in a "Tex Flex" pre-tax compensation allocation plan, and choice of "direct deposit" handling of his paychecks, was private and excepted from disclosure.

With respect to the kind of public employee information you ask about here, we note these prior decisions distinguish between information reflecting the employee's discretionary decisions, which is private, and information not reflecting employee discretionary decisions, which must be released. Some of the "benefit" information you submitted may reflect the employee's discretionary participation in optional insurance coverage or deferred compensation plans. Such information must be redacted prior to release of the requested information. We would note, however, that "benefits" provided for in the district's contract of employment with the superintendent would not be considered discretionary, and moreover would be matters of legitimate public interest such that common-law privacy protection would not apply.

We also note that some of the information in the memoranda may implicate Government Code section 552.117(1), which protects address, telephone, social security, and family information of "a current or former employee of a governmental body" if the employee, before the date of this request, opted under section 552.024 to withhold such information. If the employee here so opted under section 552.024, any home address, telephone number, or social security number information, as well as information revealing the existence of family members must be redacted. Otherwise, and except as noted above with respect to personal financial information, the requested information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William M. Walker
Assistant Attorney General
Open Records Division

WMW/ch

¹We need not address your claim under Government Code section 552.102 since that provision affords no more privacy protection than does section 552.101, addressed herein. *Hubert v. Harte Hanks Texas Newspapers*, 652 S.W. 2d 546 (Tex.App.—Austin 1983, writ ref'd n.r.e.).

Ref: ID# 118608

Enclosures: Submitted documents

cc: Ms. Sue Wood
400 W. Bluff
Woodville, Texas 75979
(w/o enclosures)