



March 22, 1999

Mr. Raymond L. Gregory
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana St., Ste. 2900
Houston, Texas 77002-2781

OR99-0784

Dear Mr. Gregory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123037.

The Athens Independent School District (the "district"), which you represent, received a request for the personnel file of a particular employee. You assert that the requested information is excepted from disclosure under sections 552.102, 552.111, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

Section 552.102 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.¹ *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at

¹Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

685; Open Records Decision No. 611 at 1 (1992). This office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. See Open Records Decision Nos. 600 (1992) (federal tax Form W-4, Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). However, salaries of public employees are public. Open Records Decision No. 545 (1990). We have reviewed the submitted information and conclude none of the information is private information that must be withheld from public disclosure under section 552.102. We note that you have redacted information concerning grades and attendance from the submitted records. Such information is not excepted from disclosure by section 552.102 and must also be released.

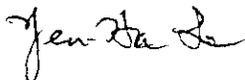
However, the documents do contain the home address, telephone number, social security number, and information revealing whether the employee has family members. This information is confidential under section 552.117(2) of the Government Code. Section 552.117(2) excepts from required public disclosure the home address, telephone number, social security number, or personal family members information of a peace officer as defined by article 2.12 of the Code of Criminal Procedure regardless of whether the officer complies with section 552.024. You inform us that the employee is a peace officer as defined by article 2.12(8). Therefore, section 552.117(2) requires you to withhold this information.

Next, you assert that section 552.111 excepts certain intraagency memoranda from public disclosure. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. ORD 615 at 5-6. The memoranda at issue concern personnel matters; therefore, you may not withhold the information under section 552.111.

Lastly, the documents contain information excepted from public disclosure by section 552.130 of the Government Code. Section 552.130 excepts information relating to a driver's license issued by an agency of this state. We have marked the information you must withhold under section 552.130.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Yen-Ha Le". The signature is written in a cursive style with a large initial "Y".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 123037

Enclosures: Marked documents

cc: Ms. Carolyn Justice
2856 Deer Run Rd.
Athens, Texas 75751
(w/o enclosures)