



April 4, 2001

Mr. Douglas Coleman
Superintendent
Hondo Independent School District
P.O. Box 308
Hondo, Texas 78861

OR2001-1340

Dear Mr. Coleman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145773.

The Hondo Independent School District (the “district”) received a request for an employee’s payroll deducted annuity information, including the employee’s current annuity statement. You claim that the requested information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 v. Texas Industrial Accident Board* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the act.¹ See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685.

¹Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes.

This office has previously found that financial information relating to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). A public employee's allocation of his salary to a *voluntary* investment program offered by his employer is a personal investment decision, and information about it is excepted from disclosure by a common law right of privacy if the transactions are not funded in whole or in part with public monies. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). Where a transaction is funded in part by the state, however, it involves the expenditure of public monies in which there exists a legitimate public interest, and the transaction is therefore not protected by privacy. Open Records Decision No. 600 (1992). We find that the information you seek to withhold constitutes personal financial information that the district must withhold under section 552.102.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

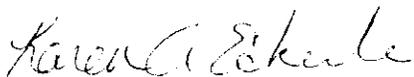
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/er

Ref: ID# 145773

Encl: Submitted documents

cc: Ms. Pam Rushing-Vance
11510 Gatesden
Tomball, Texas 77375
(w/o enclosures)