



June 27, 2002

Mr. David L. Hay
Information Coordinator
Dallas County Community College District
701 Elm Street
Dallas, Texas 75202-3299

OR2002-3491

Dear Mr. Hay:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164950.

The Dallas County Community College District (the "district") received a request for copies of personnel records on file regarding a named individual. The requestor also seeks copies of complaints or disciplinary action records related to that individual. You state that you will release some responsive information to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure pursuant to sections 552.101, 552.102, 552.117, 552.119, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.¹

You claim that some of the information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of Title 26 of the United States Code.² Section 6103(a) provides that tax return information is confidential.

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

See 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); see also Open Records Decision No. 600 (1992); Attorney General Op. MW-372 (1981). Accordingly, we conclude that the district must withhold the W-4 form that is contained within the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

You also claim that some of the information is excepted from disclosure pursuant to section 552.101 in conjunction with section 1324a of Title 8 of the United States Code. We note that an Employment Eligibility Verification, Form I-9 is governed by section 1324a. Section 1324a provides that an I-9 form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. See 8 U.S.C. § 1324a(b)(5); see also 8 C.F.R. § 274a.2(b)(4). We agree that the release of the I-9 form that is contained within the information would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the Form I-9 that is contained within the information is confidential and may only be released in compliance with the federal laws and regulations governing the employment verification system.

You also claim that some of the information is excepted from disclosure pursuant to section 552.102 of the Government Code. 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*, 540 S.W.2d 668, 683-85 (Tex. 1976), cert. denied, 430 U.S. 931 (1977) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. See *Industrial Found.*, 540 S.W.2d at 683-85. Section 552.101 also encompasses information protected from disclosure by the common-law right to privacy. Accordingly, we address your section 552.102 claim under section 552.101 in conjunction with the common-law right to privacy.

Information is protected from disclosure by the common-law right to privacy 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. See *id.* Prior decisions of this office have found that financial information relating only 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. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. See Open Records Decision No. 600

(1992) (finding designation of beneficiary of employee's retirement benefits, direct deposit authorization, TexFlex benefits, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care related to personal financial decisions). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992). Based on our review of the information, we conclude that the district must withhold from disclosure the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

You also claim that some of the information is excepted from disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note, however, that you state that the campus peace officer who is the subject of the present request is no longer employed by the district. Furthermore, we are uncertain whether the other peace officers noted in the information are still peace officers. If all of these individuals remain licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the information that we have marked must not be released by the district pursuant to section 552.117(2) of the Government Code. However, if the former campus peace officer is no longer a licensed peace officer, then such information relating to him may still be excepted from disclosure under section 552.117(1). Furthermore, if the other peace officers noted in the information are not currently peace officers, then such information relating to them may still be excepted from disclosure under section 552.1175. Accordingly, we address whether section 552.117(1) of the Government Code excepts any of this type of information regarding the former campus peace officer from disclosure. We will also address whether section 552.1175 of the Government Code excepts any of this type of information regarding the other officers noted in the information from disclosure.

Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request confidentiality in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the district must withhold from disclosure the marked information regarding the former campus peace officer pursuant to section 552.117(1), if he made a request for confidentiality under section 552.024 of the Government Code for this information prior to the date on

which the present request was received by the district, regardless of the fact that he may not currently be a peace officer. Otherwise, such information regarding the former campus peace officer may still be excepted from disclosure under section 552.1175 of the Government Code.

Section 552.1175 provides in pertinent part:

(a) This section applies only to:

...

(2) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). We note that to the extent that the former campus peace officer is not currently a peace officer and did not make a request for confidentiality under section 552.024 of the Government Code for this information prior to the date on which the present request was received by the district and to the extent that the other officers noted in the information are not currently peace officers, the district must still withhold from disclosure the information that we have marked regarding each individual pursuant to section 552.1175 of the Government Code, if each individual otherwise made a proper section 552.1175 election with the district at a time when each was a peace officer. Otherwise, we conclude that the district may not withhold any portion of that marked information pursuant to section 552.1175 of the Government Code.

We note, however, that the former campus peace officer's social security number and card, which we have marked, may nevertheless be confidential under federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994).

These amendments make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain social security numbers or cards. Therefore, we have no basis for concluding that these social security numbers or this card are confidential under section 405(c)(2)(C)(viii)(I). We caution the district, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers and card, the district should ensure that they were not obtained and are not maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

You also claim that some of the information is excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130.* Accordingly, we conclude that the district must withhold the Texas driver's license contained within the information from disclosure pursuant to section 552.130 of the Government Code. Because we base our ruling on sections 552.101, 552.102, 552.117, and 552.130 of the Government Code, we need not address your remaining claimed exception to disclosure.

In summary, the district must withhold the W-4 form that is contained within the information from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The district may only release the Form I-9 that is contained within the information in compliance with the federal laws and regulations governing the employment verification system. The district must withhold from disclosure the information that we have marked pursuant to section 552.101 in conjunction with the common-law right to privacy. If the former campus peace officer, as well as the other peace officers noted in the information, remain licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the district must withhold the information that we have marked from disclosure pursuant to section 552.117(2) of the Government Code. However, if the former campus peace officer is no longer a licensed peace officer, the district must withhold from disclosure the marked information regarding this officer pursuant to section 552.117(1) of the Government Code, if he made a request for confidentiality under section 552.024 of the Government Code for this information prior to the date on which the present request was received by the district. If the former campus peace officer is no longer a licensed peace officer and did not make a request for confidentiality under section 552.024 for this information prior to the date on which the present request was received by the district or if the other peace officers noted in the information are not currently peace officers, then the district must withhold the information that we have marked relating to each individual from disclosure pursuant to section 552.1175 of the Government Code to the extent that each individual otherwise made a proper section 552.1175 election with the district at a time when each was a peace officer.

Nevertheless, the former campus peace officer's social security number and card, which we have marked, may be confidential under federal law. The district must withhold the Texas driver's license contained within the information from disclosure pursuant to section 552.130 of the Government Code. The district must release the remaining information to the requestor.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 164950

Enc. Marked documents

cc: Mr. Darwin Dale Bible
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(w/o enclosures)