



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 5, 2002

Mr. Jose R. Guerrero  
Montalvo & Ramirez  
900 North Main  
McAllen, Texas 78501

OR2002-6930

Dear Mr. Guerrero:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173142.

The South Texas Community College (the "college"), which you represent, received a request for personnel information regarding a named college employee. You state that some responsive information will be provided to the requestor. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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. You have submitted a copy of the named employee's W-4 form as Exhibit B. An employee W-4 form is confidential under section 6103 of title 26 of the United States Code. Therefore, the college must withhold the submitted W-4 form under section 552.101 of the Government Code in conjunction with federal law.

Section 552.101 also encompasses the doctrine of common-law privacy. You contend that the documents submitted as Exhibit D contain personal financial information that is protected by common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate

concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that personal financial information is generally excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee's decisions regarding personal financial matters such as a voluntary investment program, voluntary benefits programs, and voluntary direct deposit, among others, are protected under common-law privacy), 545 (1990). This office has also ruled, however, that the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). Upon review, we agree that the documents in Exhibit D, contain information that reflects personal financial decisions that are not of legitimate public interest. The college must withhold the documents in Exhibit D under section 552.101 and common-law privacy.

Next, you contend that college transcripts in Exhibit E are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." This office has interpreted "professional public school employee" to refer to employees of public schools providing "public education" under title 2 of the Education Code, not colleges and universities providing "higher education" under title 3 of the Education Code. Therefore, we determine that section 552.102(b) does not apply to the submitted transcripts. Accordingly, the college may not withhold the transcripts in Exhibit E under section 552.102 of the Government Code. *See* Open Records Decision Nos. 470 (1987), 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees).

We note, however, that the submitted documents contain information that must be withheld from disclosure pursuant to section 552.117(1) of the Government Code. Section 552.117 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. You have provided documentation showing that the employee at issue timely elected to keep his home address and home telephone number confidential pursuant to section 552.024. Thus, we have marked the information that the college must withhold pursuant to section 552.117(1) of the Government Code.

The submitted documents also contain e-mail addresses. Section 552.137 of the Government Code provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." Therefore, unless the relevant individuals have affirmatively consented to the release of their e-mail addresses, the college

must withhold the e-mail addresses that we have marked under section 552.137 of the Government Code.

Finally, you have highlighted the employee's Florida driver's license number as information you seek to withhold in Exhibit F. Section 552.130 of the Government Code excepts from disclosure motor vehicle license and registration information issued by an agency of the State of Texas. *See* Gov't Code § 552.130. Accordingly, we determine that the college may not withhold the employee's Florida driver's license number.

In summary, the employee's W-4 form must be withheld under section 552.101 of the Government Code in conjunction with federal law. Documents reflecting personal financial decisions must be withheld under section 552.101 and common-law privacy. The college must withhold the marked home addresses and telephone numbers pursuant to section 552.117 of the Government Code. The marked e-mail addresses must be withheld pursuant to section 552.137 of the Government Code. The remainder of the submitted information must be released 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,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 173142

Enc: Submitted documents

c: Ms. Mary A. Aldridge  
Texas Faculty Association  
316 West 12th Street  
Austin, Texas 78701  
(w/o enclosures)