



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 13, 2006

Ms. Rebecca K. Miltenberger
Henslee Fowler Hepworth & Schwartz, LLP
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2006-00479

Dear Ms. Miltenberger:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 240291.

The Italy Independent School District (the "district"), which you represent, received a request for the job applications, resumes, and employment contracts of several employees of the district. You state that you will release portions of the requested information to the requestor, but claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that portions of Exhibit E are excepted from disclosure under sections 552.101 and 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 Tex. 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. 540 S.W.2d 668 (Tex. 1976). We will therefore consider your privacy claims under section 552.101 together with your claims regarding section 552.102.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of 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 Foundation*, 540 S.W.2d at 685. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). However, this office has found that the names, addresses, and telephone numbers of members of the public are not excepted from required public disclosure under common law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, the home addresses and telephone numbers of private citizens are generally not protected under the Act's privacy exceptions). Upon review, we conclude that the district may not withhold any of the submitted information on the basis of common law privacy.

You claim that portions of Exhibit D are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). You argue that an employee's grade point averages contained in a resume in Exhibit D are excepted under section 552.102(b). However, section 552.102(b) applies only to transcripts. Accordingly, section 552.102(b) does not apply to the employee's grade point average contained in documents other than transcripts, and the district may not withhold this information on that basis. *See* Open Records Decision Nos. 649 at 3 (1996) (language of a confidentiality provision controls the scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public).

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former 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(a)(1). However, an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under that section. *See* Open Records Decision No. 622 at 4 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express

and cannot be implied). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the two employees whose information is at issue in Exhibit F timely elected to keep their personal information confidential. Thus, pursuant to section 552.117(a)(1), the district must withhold the marked information in Exhibit F. We note that if any of the other employees whose information is at issue timely elected to keep their personal information confidential, then you must also withhold their information under section 552.117(a)(1).

We note that the remaining submitted information contains social security numbers. Section 552.147 of the Government Code provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Gov’t Code § 552.147. Therefore, the district must withhold the social security numbers contained in the submitted information under section 552.147.¹ As our ruling is dispositive, we need not address your remaining claims for this information.

In summary, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must also withhold the social security numbers contained in the submitted information under section 552.147 of the Government Code. The remaining information must be released.

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, upon receiving this ruling, the governmental body

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/segh

Ref: ID# 240291

Enc: Submitted documents

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