



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2006

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

OR2006-10467

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# 259082.

The Santo Independent School District (the "district"), which you represent, received a request for information pertaining to a named district employee. You indicate that the district will release some of the requested information to the requestor. You also inform us that you have redacted social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act). You claim that some of the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

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. This section encompasses information protected by other statutes. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal

¹We note, and you acknowledge, that the documents submitted in Exhibit J are exact duplicates of the documents submitted in Exhibits B-I. The district should withhold or release the duplicate documents in Exhibit J in accordance with our ruling for Exhibits B-I.

investigations. See 8 U.S.C. § 1324a(b)(5); see also 8 C.F.R. § 274a.2(b)(4). Release of this form under the Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we find that the I-9 form in Exhibit C is confidential under section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 6103(a) of Title 26 of the United States Code provides that tax return information is confidential. See 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); see also Open Records Decision No. 600 (1992); Attorney General Opinion MW-372 (1981). Accordingly, we conclude that the district must withhold the W-4 forms in Exhibits D and E pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Next, we address your claim that portions of the information in Exhibits F and I 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 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(a) 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 Act. See *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Accordingly, we will consider your privacy claims under section 552.101 and section 552.102(a) together.

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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision No. 600 (1992) (designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care). Upon review, we agree that the designated beneficiary information you have marked in Exhibit F is protected under common-law privacy. However, we find that the phone numbers you have marked in Exhibit I do not constitute highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person. See Open Records Decision Nos. 478 (1987), 455 (1987), 169 (1977). Accordingly, with the exception of the information we have marked for release, the district must withhold the information you have marked under section 552.101 in conjunction with common-law privacy.

Next, you claim that portions of the information in Exhibit B are excepted from required public 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). Accordingly, we agree that the district must withhold the information you have marked in Exhibit B pursuant to section 552.102(b).

You claim that some of the information in Exhibits G and B is confidential under section 552.130 of the Government Code. In relevant part, section 552.130 provides:

(a) Information is excepted from required public disclosure if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore, the district must withhold the Texas-issued motor vehicle record information we have marked under section 552.130.²

Finally, we note that portions of Exhibit F may be protected by section 552.117 of the Government Code.³ Section 552.117(a)(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(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 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). In this case, you do not inform us nor provide documentation showing that the employee at issue timely elected confidentiality under section 552.024. Thus, if the employee timely elected to keep his personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1). The district may not withhold this information under

²As our ruling is dispositive, we need not address your remaining claim for this information.

³The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.117(a)(1) if this employee did not make a timely election to keep the information confidential.

In summary, the I-9 form in Exhibit C may only be released in compliance with the federal laws and regulations governing the employment verification system. The district must withhold the W-4 forms in Exhibits D and E pursuant to section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. With the exception of the information we have marked for release, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must also withhold the information you have marked in Exhibit B pursuant to section 552.102(b) of the Government Code, and the Texas-issued motor vehicle record information we have marked under section 552.130 of the Government Code. If the employee at issue timely elected to keep his personal information confidential, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining 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, upon receiving this ruling, the governmental body 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,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 259082

Enc. Submitted documents

c: Mr. Jay Board
Alliance Regional Newspapers
1721 East Southlake Boulevard, Suite 100
Southlake, Texas 76092
(w/o enclosures)