



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2007

Mr. Kevin Brown
Director of Personnel and Public Information
Alamo Heights Independent School District
7101 Broadway
San Antonio, Texas 78209

OR2007-04458

Dear Mr. Brown:

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# 276850.

The Alamo Heights Independent School District (the "district") received a request for the following information regarding district employees: first name, last name, date of birth, mailing address, home telephone number, assigned district campus, position, salary, years of service with the district, years of service in public education, and participation in specified retirement plans. You claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exception you claims and reviewed the submitted information.

We first note that certain addresses and telephone numbers have been redacted from the submitted documents. You do not indicate, and this office is not otherwise informed, that the district is authorized to redact such information without requesting a decision under section 552.301 of the Government Code. *See* Gov't Code § 552.301(a). Because we are able in this instance to discern the nature of the redacted information, we will determine whether it is excepted from public disclosure. In the future, however, you should refrain from redacting information that you submit to this office in seeking an open records ruling, unless the information is the subject of a previous determination. *See id.* §§ 552.301(e)(1)(D), .302; Open Records Decision No. 673 (2001).

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 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 523 (1989) (individual’s mortgage payments, assets, bills, and credit history). Thus, a public employee’s allocation of part of the employee’s salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (participation in TexFlex), 545 at 3-5 (1990) (deferred compensation plan).

We note that you have submitted a spreadsheet containing a variety of responsive information pertaining to district employees. You state that some of the listed employees elected to participate in voluntary deferred compensation plans that are not funded by the district, and you have electronically highlighted the names of those employees. However, the submitted spreadsheet does not otherwise identify these employees as participants. Accordingly, we conclude that, the names of participants are not confidential under common-law privacy and the district may not withhold the names under section 552.101 on that ground; however, the highlighting surrounding these names reveals participation and thus this highlighting, but not the names, must be removed from the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code 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. However, we note an individual’s personal post office box number is not a “home address” and therefore may not be withheld under section 552.117. *See* Gov’t Code § 552.117; Open Records Decision No. 622 at 4 (1994) (“The legislative history of section 552.117(1)(A) makes clear that its purpose is to protect public employees from being harassed *at home*. *See* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985).” (Emphasis added.)); *see also* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987), 465 at 4-5 (1987).

Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf

of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If employees made a timely election to keep their home address and home telephone number confidential, the district must withhold this information. The district may not withhold this information under section 552.117 for employees that did not make a timely election to keep such information confidential.

In summary, the district must withhold the home addresses and home telephone numbers of those employees who made a timely election pursuant to section 552.117 of the Government Code. The remaining submitted information must be released. However, pursuant to section 552.101 of the Government Code in conjunction with common-law privacy, the district must remove the highlighting of the employees who are participants in voluntary deferred compensation plans:

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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/eb

Ref: ID# 276850

Enc. Submitted documents

c: Ms. Courtney Turnage
8425 Twisted Oaks
San Antonio, Texas 78266
(w/o enclosures)