



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 18, 2007

Ms. J. Leanne Bram Lundy
Henslee, Fowler, Hepworth & Schwartz, L.L.P.
3200 Southwest Freeway, Suite 1200
Houston, Texas 77027

OR2007-07707

Dear Ms. Lundy:

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# 281512.

The Galveston Independent School District (the "district"), which you represent, received a request for all documents in the personnel files of the district superintendent and the district chief of police. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.1175, and 552.130 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." Gov't Code § 552.101. This section encompasses information protected by other statutes. 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 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 raise section 552.101 in conjunction with section 21.355 of the Education Code, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a

teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* Open Records Decision No. 643 at 4. We also determined that the word “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You assert that some of the submitted information is confidential under section 21.355. You inform us that the district employee at issue was required to hold and did hold the appropriate certificate and was serving as an administrator at the time of the submitted evaluations. Therefore, we conclude that the information we have marked is confidential under section 21.355, and the district must withhold it under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is also protected under common-law privacy. Open Records Decision Nos. 600 (1992), 545 (1990). But this office has found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). We have marked personal financial information that the district must withhold under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information is not intimate or embarrassing or is subject to a legitimate public interest and may not be withheld under section 552.101 on this basis.

You claim that some of the information pertaining to the superintendent is excepted from 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; Open Records Decision No. 526 (1989). Thus, with the exception

of the employee's name, the courses taken, and the degree obtained, the district must withhold the transcript information, which we have marked, under section 552.102(b) of the *Government Code*.

Section 552.117(a)(1) of the *Government Code* excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who timely request that such information be kept confidential under section 552.024. 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).

You have submitted the superintendent's election form in which she timely elected to not allow public access to her social security number in accordance with the procedures of section 552.024 of the *Government Code*. Therefore, the district must withhold the information we have marked under section 552.117(a)(1).

You also claim that some of the remaining information is excepted under section 552.117(a)(2) of the *Government Code*. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the *Government Code*. *Gov't Code* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the *Code of Criminal Procedure*. Accordingly, we have marked information that the district must withhold under section 552.117(a)(2) of the *Government Code*.

You indicate that some of the remaining information may pertain to peace officers employed by a governmental body other than the district. Section 552.1175 of the *Government Code* provides in part:

(b) Information that relates to the home address, home telephone number, or social security number of [a peace officer as defined by article 2.12 of the *Code of Criminal Procedure*], 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(b). To the extent the information we have marked pertains to officers of another agency who provide the district with notice in accordance with

section 552.1175(b)(2) that the officers choose to keep the marked information confidential, the district must withhold the information pursuant to section 552.1175 of the Government Code.

You claim that some of the submitted information is excepted from public disclosure 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[.]

Gov't Code § 552.130(a)(1). Upon review, we determine that the district must withhold the Texas motor vehicle record information we have marked under section 552.130 of the Government Code.

We also note that some of the remaining information is subject to sections 552.136 and 552.137 of the Government Code.¹ Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* We have marked bank account numbers that the district must withhold under section 552.136 of the Government Code.

The remaining information contains an e-mail address. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address we have marked does not appear to be of a type specifically excluded by section 552.137(c). You have not informed us that the individual to whom this e-mail address belongs has affirmatively consented to its release. Therefore, the district must withhold the marked e-mail address under section 552.137.

In summary, the district must withhold the submitted W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States

¹The Office of the Attorney General will raise mandatory exceptions like sections 552.136 and 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Code. The district must also withhold the administrator evaluations that we have marked under section 552.101 in conjunction with section 21.355 of the Education Code. The personal financial information that we have marked must be withheld under section 552.101 in conjunction with common-law privacy. Other than the employee's name, the courses taken, and the degree obtained, the transcripts that we have marked must be withheld under section 552.102(b) of the Government Code. The district must withhold the superintendent's social security number under section 552.117(a)(1) of the Government Code. The district must also withhold the information we have marked under section 552.117(a)(2). If the peace officers of an agency other than the district provide the district with notice that the officers choose to keep the marked information confidential, the district must withhold the information pursuant to section 552.1175 of the Government Code. The district must also withhold the Texas motor vehicle record information that we have marked under section 552.130 of the Government Code. Finally, the district must withhold the bank account numbers and e-mail address that we have marked under sections 552.136 and 552.137 of the Government Code, respectively. The remaining information must be released to the requestor.

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,

A handwritten signature in black ink that reads "L. Joseph James". The signature is written in a cursive, flowing style.

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/eeg

Ref: ID# 281512

Enc. Submitted documents

c: Mr. Isiah Carey
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(w/o enclosures)