



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 23, 2007

Ms. Ellen H. Spalding  
Feldman & Rogers, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2007-13824

Dear Ms. Spalding:

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# 292656.

The Eanes Independent School District (the "district"), which you represent, received a request for the latest contact, salary, and benefits information regarding a specified individual. You state that the district has released most of the requested information to the requestor. You claim that the submitted information is not public information subject to disclosure under the Act. Alternatively, you claim that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

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<sup>1</sup> You also inform us that the requestor allows the district to withhold certain e-mail addresses, account information, social security numbers, and grades from teacher transcripts. Thus, this information is not responsive to the present request.

Initially, we address your argument that the submitted information is not public information subject to disclosure under the Act. The Act applies only to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Information is generally subject to chapter 552 when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. *Open Records Decision No. 635 (1995)*. In this instance, the submitted information includes 403(b) plan "Salary Reduction Agreements." You claim that these documents detail an agreement between the individual and the plan administrator only, regarding how much of the individual's salary will be withheld each month for the 403(b) plan, and which does not otherwise relate to a benefit from the district to the individual. We note, however, that the documents reveal that the district is required to apply and remit the salary reductions to the plan administrator on behalf of the individual. We also note that the district maintained possession of the 403(b) plan documents at issue when it received the present request for information. Therefore, having considered your representations and reviewed the submitted 403(b) plan documents, we find that these documents constitute information that the district collected, assembled, or maintained in connection with the transaction of official business. *See* Gov't Code § 552.002(a)(1). We therefore conclude that the submitted documents are considered public information under section 552.002(a).

We now address your claim that some of the submitted information is subject to section 552.101 of the Government Code. Section 552.101 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, which protects information if the information (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). 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. 600 (1992)* (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy). The submitted information reveals

whether a district employee has elected to participate in an annuity plan, the vendor chosen by the employee, and the amount contributed to the plan. Upon review, we agree that the submitted information is personal financial information that must be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

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,

A handwritten signature in black ink, appearing to read 'A. Meesey', with a large, stylized flourish at the end.

Allan D. Meesey  
Assistant Attorney General  
Open Records Division

ADM/EEG

Ref: ID# 292656

Enc. Submitted documents

c: Ms. Dianna Pharr  
2204 Westlake Drive  
Austin, Texas 78746  
(w/o enclosures)