



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 4, 2008

Ms. Sonya Marquez Garcia  
Escamilla & Poneck, Inc.  
5219 McPherson Road, Suite 306  
Laredo, Texas 78041

OR2008-07590

Dear Ms. Garcia:

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# 311824.

The United Independent School District (the "district") received a request for the personnel files of three named district employees. You claim that portions of the submitted personnel files are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.122, and 552.130 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

We first address your argument under common-law privacy, as it is potentially the most encompassing argument you make. Section 552.101 of the Government Code excepts from public 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. Section 552.102 of the Government Code excepts from

---

<sup>1</sup>Although you also raise section 552.111 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume that you have withdrawn this exception. See Gov't Code §§ 552.301, 552.302.

<sup>2</sup>We note, and you acknowledge, that the submitted documents contain social security numbers. Section 552.147(b) of the Government Code authorizes a government 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.

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*, 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 of the Act. See *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (citing *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976)). Accordingly, we will consider your common-law privacy claims under both sections 552.101 and 552.102 of the Government Code.

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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. In this instance, you argue that Exhibits B, C, and D should all be withheld in their entirety under section 552.102. We note that these exhibits contain the personnel files of the three district employees named in the present request. This office has found that the public has a legitimate interest in information that relates to public employment and public employees, and information that pertains to an employee's actions as a public servant generally cannot be considered beyond the realm of legitimate public interest. See Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern); 542 (1990); 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow). Therefore, we find that Exhibits B, C, and D may not be withheld in their entirety under section 552.102.

However, we note that each personnel file at issue contains financial information. Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage that is offered by his employer is a personal investment decision and information about it is excepted from disclosure under the common-law right of privacy. See ORD 545. Likewise, an employee's designation of a retirement beneficiary is excepted from disclosure under the common-law right to privacy. See ORD 600. However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from

disclosure. *See id.* at 10. In this instance, you have not provided any arguments explaining which of the retirement and insurance coverages described in Exhibits B, C, and D are optional and which are provided by the district. Therefore, we have marked those portions of the submitted personnel files that appear on their face to reflect voluntary financial decisions by district employees. We find that there is no legitimate public interest in the release of this information. Accordingly, the district must withhold the information we have marked under section 555.101 in conjunction with common-law privacy. You do not explain, and the documents at issue do not reflect, how any of the remaining information reflects personal financial decisions made by the employees at issue. Therefore, none of the remaining information may be withheld under section 552.101 with common-law privacy.

Section 552.101 also encompasses section 21.355 of the Education Code. Section 21.355 provides that “a document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that an administrator is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is serving as an administrator at the time of the evaluation. *See id.* at 4.

You contend that the evaluations within Exhibits C and D are confidential under section 21.355. Upon review, we note that the documents within these exhibits reflect that the employees at issue hold certificates under chapter 21 of the Education Code. Accordingly, the evaluations we have marked within Exhibit C and D are confidential under section 21.355 and must be withheld under section 552.101 of the Government Code.<sup>3</sup>

You also raise section 552.101 in conjunction with section 1324a of title 8 of the United States Code, which 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 investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). However, upon review, we find that the submitted personnel files do not contain I-9 forms that are subject to section 1324a. Accordingly, no information may be withheld on this basis.

You argue that Exhibits C and D contain transcripts that are subject to section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Gov’t Code § 552.102(b). This section further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. Thus, with the exception of the employee’s name, the

---

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

courses taken, and the degree obtained, the district must withhold the transcripts we have marked pursuant to section 552.102(b).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address, home telephone number, social security numbers, and family member information of current or former officials or employees of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. 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). Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We note that you have included election forms in Exhibits C and D. The employee at issue in Exhibit C elected to keep both his home address and home telephone number confidential under section 552.024. Accordingly, we have marked information Exhibit C that the district must withhold under section 552.117(a)(1). However, the employee at issue in Exhibit D did not elect to keep any of her information confidential. Therefore the district may not withhold any information from this personnel file under section 552.117(a)(1) 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. 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 from Exhibit B under section 552.117(a)(2) of the Government Code.

Section 552.122 of the Government Code excepts from disclosure "a test item developed by a . . . governmental body[.]" Gov't Code § 552.122(b). In Open Records Decision No. 626 (1994), this office determined that the term "test item" includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.* at 6. Traditionally, this office has applied section 552.122 where release of test items might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8.

You generally assert that section 552.122 is applicable to the evaluations of the named district peace officer contained within Exhibit B. We find, however, that section 552.122 does not apply to these job performance evaluations, as they do not test any specific knowledge of an applicant. *See id.* at 6. Accordingly, we determine that these job

evaluations do not constitute test items for purposes of section 552.122, and they may not be withheld on this basis.

You state that the submitted personnel files contain Texas driver's license numbers. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . 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). The district must withhold the Texas driver's license numbers we have marked under section 552.130 of the Government Code.

We note that Exhibit D contains information subject to section 552.136, which provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device 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.

(b) Notwithstanding 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.

*Id.* § 552.136.<sup>4</sup> Upon review, the district must withhold the checking account and routing numbers we marked within Exhibit D under section 552.136.

Finally, we note that Exhibit B contains the personal e-mail address of one of the named employees. Section 552.137 of the Government Code states that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter," unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). We have marked the personal e-mail address in the submitted information that the district must withhold under section 552.137 unless the owner of the e-mail address has affirmatively consented to its disclosure.

---

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with section 21.355 of the Education Code and common-law privacy. The district must withhold the transcripts within Exhibits C and D in accordance with section 552.102(b) of the Government Code, and the district must withhold the information we have marked under sections 552.117, 552.130, 552.136 of the Government Code. Unless it receives consent for its release, the district must also withhold the e-mail address we have marked under section 552.137 of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 311824

Enc. Submitted documents

c: Ms. Tricia Cortez  
Staff Writer, Laredo Morning Times  
111 Esperanza Drive  
Laredo, Texas 78041  
(w/o enclosures)