



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2008

Ms. Meridith Hayes
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2008-12979

Dear Ms. Hayes:

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# 322374.

The Plano Independent School District (the "district"), which you represent, received a request for the personnel file of a named individual. You state that you have released some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.136, 552.137 and 552.147 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[,]" and encompasses the doctrine of common law privacy. Gov't Code § 552.101. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 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 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

¹We note that you have redacted social security numbers from the submitted information. Section 552.147(b) of the Government Code authorizes a governmental 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. Gov't Code § 552.147(b).

common law privacy as incorporated by section 552.101. See *Indus. Found.*, 540 S.W.2d at 683-85. 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. The type 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. Generally, however, 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). The submitted information pertains to the qualifications and job performance of a public employee. Therefore, we conclude that there is a legitimate public interest in this information. Further, we find that you have failed to explain how any portion of the information at issue constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Accordingly, the submitted information is not protected by common law privacy, and no portion of the information may be withheld under section 552.101 or 552.102 of the Government Code on this basis.

Section 552.102(b) of the Government Code 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, except for the information that reveals the degree obtained and the courses taken, the district must withhold the transcript in Exhibit C under section 552.102(b) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the current and former 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. Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). You inform us, and provide supporting documentation, that the individual at issue elected to withhold her address and personal telephone number from public release before the date of the request. However, we note that the individual at issue did not elect to withhold family information on this form, and thus her family member information is not excepted from disclosure unless she made such election at another time. Therefore, pursuant to section 552.117(a)(1), the district must withhold the

addresses and telephone number of the individual at issue, which we have marked. If the individual at issue made the election to keep her family member information confidential prior to the district's receipt of the request for information, the district must also withhold the family member information we have marked under section 552.117(a)(1). If no election was made to keep her family member information confidential, it may not be withheld under section 552.117(a)(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." *Id.* § 552.136(b). 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, and includes an account number. *Id.* § 552.136(a). Accordingly, the district must withhold the account numbers we have marked under section 552.136 of the Government Code.

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). Upon review, we find the submitted information does not contain e-mail addresses. Thus, the district may not withhold any of the submitted information under section 552.137 of the Government Code.

Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147(a). The district may withhold the social security number we have marked under section 552.147.

In summary, except for the information that reveals the degree obtained and the courses taken, the district must withhold the transcript in Exhibit C under section 552.102(b) of the Government Code. The district must withhold the address and personal telephone numbers we have marked under section 552.117(a)(1). If the individual at issue made the election to keep her family member information confidential prior to the district's receipt of the request for information, that information, which we have marked, must also be withheld under section 552.117(a)(1). The district must withhold the account numbers we have marked under section 552.136 of the Government Code. The district may withhold the social security number we have marked under section 552.147. The remaining information must be released.

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). If the governmental body does not file suit over 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).

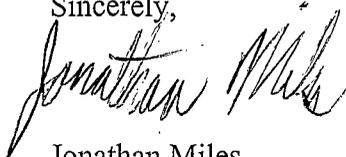
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jh

Ref: ID# 322374

Enc. Submitted documents

c: Mr. J. Umoren
P.O. Box 270114
Dallas, Texas 75227
(w/o enclosures)