



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2009

Ms. Andrea Sheehan
Ms. Elisabeth A. Donley
Law Offices of Robert E. Luna
Attorney for Garland Independent School District
4411 North Central Expressway
Dallas, Texas 75205

OR2009-14067

Dear Ms. Sheehan and Ms. Donley:

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# 357324.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for records for a specified time period pertaining to the district's general ledger, bank account, general operating fund accounts, and check registers from the district's general operating fund accounts.¹ You state you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.136, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹We note that the district received clarification regarding this request. *See* Gov't Code § 522.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999)(discussing tolling of deadlines during period in which governmental body is awaiting clarification).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially we note, and you acknowledge, that the district failed to raise section 552.117 within the ten business day deadline mandated in section 552.301(b). *See* Gov't Code § 552.301(b). However, because section 552.117 is a mandatory exception that can provide a compelling reason to withhold information, we will consider your arguments under this exception. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302).

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). Pursuant to section 552.117(a)(1), the district must withhold the personal information that pertains to a current or former employee of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. Such information may not be withheld for individuals who did not make a timely election. We marked information that must be withheld if section 552.117 applies.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses section 57.11(d) of the Education Code, which provides that "[s]tudent loan borrower information collected, assembled, or maintained by the [Texas Guaranteed Student Loan Corporation ("TGSLC")] is confidential and is not subject to disclosure under Chapter 552, Government Code." Educ. Code § 57.11(d). The district argues that certain student loan garnishment information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 57.11(d) of the Education Code.³ The district explains that once TGSLC has determined a defaulted borrower is eligible for wage withholding and employment is verified, a wage withholding order is issued to the borrower's employer. The order requires the employer to deduct portions of the employee's wages and forward them to the TGSLC. The district states that records relating to garnishment of a district employee's salary pursuant to a wage withholding order is TGSLC's borrower information and is confidential under section 57.11 of the Education Code. This office has recognized that confidential information may be transferred between governmental bodies without violating its confidential character on the basis of a recognized need to maintain an unrestricted flow of information between governmental bodies. *See* Open Records Decision No. 674 at 4 (2001) (citing thirty years of authority for intergovernmental transfer doctrine). The intergovernmental transfer of the student loan borrower information does not affect the confidential status of the transferred

³This office has determined that information concerning student loans guaranteed by the TGSLC is not private. *See* Open Records Decision No. 480 (1987).

information. *See id.* Consequently, the district must withhold the information we have marked, concerning deductions required by a TGSLC wage withholding order.

Section 552.101 also encompasses section 825.507 of the Government Code, which provides in relevant part:

(a) Records of a participant that are in the custody of the retirement system or of an administrator, carrier, attorney, consultant, or governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section . . . [.]

(b) The retirement system may release records of a participant, including a participant to which Chapter 803 [of the Government Code] applies, to:

(1) the participant or the participant's attorney or guardian or another person who the executive director determines is acting on behalf of the participant;

(2) the executor or administrator of the deceased participant's estate, including information relating to the deceased participant's beneficiary;

(3) a spouse or former spouse of the participant if the executive director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(4) an administrator, carrier, consultant, attorney, or agent acting on behalf of the retirement system;

(5) a governmental entity, an employer, or the designated agent of an employer, only to the extent the retirement system needs to share the information to perform the purposes of the retirement system, as determined by the executive director;

(6) a person authorized by the participant in writing to receive the information;

(7) a federal, state, or local criminal law enforcement agency that requests a record for a law enforcement purpose;

(8) the attorney general to the extent necessary to enforce child support; or

(9) a party in response to a subpoena issued under applicable law if the executive director determines that the participant will have a reasonable opportunity to contest the subpoena.

.....

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system.

Id. § 825.507(a)-(b), (g). You state that portions of the submitted information consist of records of participants in the retirement system that are in the custody of the district in cooperation with the retirement system. We note the requestor has not asserted any of the provisions of section 825.507(b) are applicable in this instance, nor provided any information that would allow the district to determine that any of these provisions apply. *See id.* §825.507(b). Accordingly, we conclude the information you have marked is confidential under section 825.507 of the Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address the district's section 552.102(a) claim in conjunction with its common-law privacy claim under section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court stated that the information is excepted from disclosure if (1) it 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. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has 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, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common-law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also* ORD 600 (employee's designation of retirement

beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care). First, we note that you seek to withhold the name of a corporate entity under common-law privacy. The named corporate entity has no common-law right to privacy. *See* Open Records Decision Nos. 620 (1993)(corporation has no right to privacy), 192 (1978)(right to privacy is designed primarily to protect human feelings and sensibilities, rather than property, business, or other pecuniary interests); *see also U.S. v. Morton Salt Co.*, 338 U.S. 632, 652 (1950); *Rosen v. Matthews Constr. Co.*, 777 S.W.2d 434 (Tex. App. -Houston [14th Dist.] 1989), *rev'd on other grounds*, 796 S.W.2d 692 (Tex. 1990)(corporation has no right to privacy). We also note that you have marked student loan, Internal Revenue Service ("IRS"), child support, bankruptcy, and debt collection information under common-law privacy. Upon review, we find that the bankruptcy and debt collection information you have marked is personal financial information that is highly intimate or embarrassing and of no legitimate public interest, and you must withhold this information under common-law privacy.

With respect to the remaining student loan information, we note that in Open Records Decision No. 480 (1987), this office considered whether or not information regarding individuals who defaulted on student loans was purely personal financial information protected under a right of privacy. *See* ORD 480. In that decision, we determined that because the student loans at issue were backed by public funds, the public had a legitimate interest in information pertaining to the default of the loans, given the fact that public funds were directly involved. *Id.* at 4. We concluded that a right of privacy did not protect the student loan information, as the public nature of the transactions required the conclusion that whatever privacy interests were implicated by the information were outweighed by the public's right to be apprised by the manner in which its funds were being handled. *Id.* at 5. Therefore, the district may not withhold any portion of the remaining information pertaining to the garnishment of wages for student loan defaults. However, you also indicate that some of the deductions pertain to voluntary student loan payments by district employees. In this instance, you have failed to identify which deductions were garnishments for student loan defaults and which were voluntary payments. Thus, we must rule conditionally. To the extent the deductions are for voluntary student loan payments, the district must withhold the information we have marked under common-law privacy. To the extent the deductions pertain to the garnishment of wages for the default of student loan payments, the district may not withhold this information under common-law privacy, and it must be released.

You also seek to withhold information pertaining to deductions for IRS payments and collections. As previously noted, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Thus, the doctrine of common-law privacy does not generally protect information regarding such a transaction. In this instance, there is a legitimate public interest in a debt owed to the federal government. *See* ORD 545 (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). Further, you have provided no indication that any of the IRS payments pertain to voluntary elections by district

employees. *See* Gov't Code § 552.301(e)(1)(A) (providing that it is governmental body's burden to establish applicability of claimed exception or otherwise explain why requested information should not be released). Accordingly, you may not withhold the IRS deduction information you have marked, or the corresponding entries you have marked on the check register, under common-law privacy.

You also seek to withhold information that pertains to child support payroll deductions. We note that the information in this instance is generally subject to 552.117 of the Government Code. However, to the extent the employees at issue did not make a timely election under section 552.024 of the Government Code to withhold their information, we will address your arguments under common-law privacy for this information. We again note that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD 545. Therefore, the district may not withhold any portion of the remaining information pertaining to the garnishment of wages for child support. However, you also indicate that some of the deductions may pertain to voluntary child support payments. In this instance, you have failed to identify which child support payments were made pursuant to a garnishment order and which are voluntary deductions. Thus, we must rule conditionally. To the extent the deductions are for voluntary child support payments, the district must withhold the information we have marked under common-law privacy. To the extent the deductions pertain to the garnishment of wages for child support payments, the district may not withhold this information under common-law privacy, and it must be released.

You assert that some of the remaining information is excepted under section 552.136 of the Government Code. Section 552.136(b) provides 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.” The district must withhold the bank account numbers you have marked under section 552.136 of the Government Code.

Finally, you also assert that some of the remaining information is excepted under section 552.147 of the Government Code, which provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. The district may withhold the social security number you have marked under section 552.147 of the Government Code.⁴

In summary, the district must withhold: (1) the information we have marked under section 552.117 to the extent the district employee made a timely election under 552.024, (2) the information we have marked, concerning deductions required by a TGSLC wage withholding order under section 552.101 of the Government Code in conjunction with

⁴We note that 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.

section 57.11(d) of the Education Code; (3) the information you have marked pursuant to section 552.101 of the Government Code in conjunction with section 825.507 of the Government Code; (4) the bankruptcy and debt collection information you have marked under common-law privacy. To the extent the information pertains to voluntary elections by district employees, the district must withhold the information we have marked pertaining to voluntary student loan and child support payments. The district must also withhold the account numbers you have marked under section 552.136 of the Government Code. The district may withhold the social security number you have marked under section 552.147 of the Government Code. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/eeg

Ref: ID# 357324

Enc. Submitted documents

cc: Requestor
(w/o enclosures)