



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2010

Mr. J. Erik Nichols
Counsel to Alief Independent School District
Feldman, Rogers, Morris & Grover, LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2010-09804

Dear Mr. Nichols:

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# 385176.

The Alief Independent School District (the "district"), which you represent, received a request for a list of district employees, including home address, phone number, campus, start date, position, date of birth, salary, and years of service. You state some of the requested information has been released. You claim a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of 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[.]" Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. You contend a portion of the requested information is excepted under section 552.101 in

¹We 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.

conjunction with section 521.051(a) of the Business and Commerce Code.² This section provides that:

[a] person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent, and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

Bus. & Comm. Code § 521.051(a) (formerly Bus. & Comm. Code § 48.101(a)). "Personal identifying information" is defined as "information that alone or in conjunction with other information identifies an individual" and includes an individual's name. *Id.* § 521.002(a)(1)(A). You assert a portion of the requested information meets the definition of "personal identifying information" under section 521.002(a)(1). *See id.* However, section 521.051(a) does not prohibit the transfer of personal identifying information of another person unless the transfer is made with the intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name without that person's consent. *See id.* § 521.051(a). In this instance, the district's release of the information at issue would be for the purpose of complying with the Act, and not "with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the [employee]'s name." *See id.* Therefore, section 521.051(a) does not prohibit the district from transferring the requested information. *See id.* Thus, we conclude the district may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with section 521.051 of the Business and Commerce Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. Section 552.102 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." Gov't Code § 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 v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address your section 552.102(a) claim together with your claim under section 552.101 in conjunction with common-law privacy.

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) it contains highly intimate or embarrassing facts, the publication of which

²The Identity Theft Enforcement and Protection Act, formerly found in chapter 48 of the Business and Commerce Code, was repealed and recodified as chapter 521 of the Business and Commerce Code in 2007. *See* Act of May 17, 2007, 80th Leg., R.S., ch. 885, §§ 2.01 (adding chapter 521, Bus. & Comm. Code), 2.47(a)(2)-(4) (repealing former chapter 48, Bus. & Comm. Code), 2007 Tex. Gen. Laws 1906, 2082.

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. The type of information considered intimate or 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. You assert the submitted dates of birth are excepted from disclosure pursuant to section 552.101 in conjunction with common-law privacy, section 552.102(a), and the judicial decisions of other jurisdictions. We note, however, both Texas courts and this office have determined that dates of birth are not highly intimate or embarrassing. *See Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, pet. granted) (“We hold that date-of-birth information is not confidential[.]”); *see also* Attorney General Opinion MW-283 (1980) (public employee’s date of birth not protected under privacy); Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy). Thus, you have failed to demonstrate the applicability of common-law privacy to the submitted records. Consequently, the district may not withhold the information at issue under either section 552.101 of the Government Code in conjunction with common-law privacy or section 552.102(a) of the Government Code.

We note a portion of the submitted information may be subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). However, we note an individual’s personal post office box number may not be withheld under section 552.117. *See id.* § 552.117; Open Records Decision No. 622 at 4 (1994). Whether a particular piece of 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). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. We have marked a portion of the submitted information that is generally subject to section 552.117(a)(1). If an employee to whom this information pertains timely elected confidentiality under section 552.024 for the type of information at issue, the district must withhold the marked information pertaining to that employee under section 552.117(a)(1) of the Government Code. If an employee did not timely elect confidentiality for this type of information, the district may not withhold information pertaining to that employee under section 552.117(a)(1). As you raise no further exception to the disclosure of the remaining information, it must be released.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/tp

Ref: ID# 385176

Enc. Submitted documents

c: Requestor
(w/o enclosures)