



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2010

Mr. Sterling T. Burleson
Swchartz & Eichelbaum Wardell Mehl and Hansen P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2010-17825

Dear Mr. Burleson:

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# 401684.

The Mission Independent School District (the "district"), which you represent, received a request for nine categories of information pertaining to district employees, including whether each employee "[o]wns a 403(b)[.]" You state the district has redacted the home addresses and telephone numbers of certain district employees and provided notice to the requestor pursuant to section 552.024(c-2) of the Government Code.¹ You state the district has released some of the requested information, but claim some of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which protects information if it (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. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To

¹Section 552.024(c) of the Government Code authorizes a governmental body to redact, without the necessity of requesting a decision from this office, the home address, home telephone number, social security number, and family member information of a current or former employee who properly elected to keep this information confidential. Gov't Code § 552.024(c).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

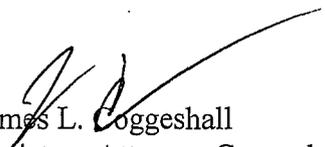
demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office also has found that personal financial information unrelated to a transaction with a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (personal financial choices concerning insurance are generally confidential), 545 (1990) (common-law privacy protects personal financial information not relating to the financial transaction between an individual and a governmental body), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (common-law privacy protects assets and income source information). Thus, we conclude that the decision to purchase annuities is a private, financial decision that is protected by common-law privacy.

The submitted information includes a column titled "ANNUITY" that reveals whether an employee has elected to have a portion of his or her monthly wages withheld for a 403(b) account. Upon review, we agree the information in this column is personal financial information that is intimate or embarrassing and is not of legitimate concern to the public. Therefore, the district must withhold the information in the column titled "ANNUITY" under section 552.101 in conjunction with common-law privacy.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tp

Ref: ID# 401684

Enc. Submitted documents

c: Requestor
(w/o enclosures)