



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 3, 2011

Ms. Claire E. Swann
Abernathy Roeder Boyd & Joplin, PC
P.O. Box 1210
McKinney, Texas 75070-1210

OR2011-06036

Dear Ms. Swann:

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# 416245.

The Mansfield Independent School District (the "district"), which you represent, received a request for a list of all district employees, including campus, home address and telephone number, school e-mail address, years of service, current salary, date of birth, and whether the employee owns a 403(b) retirement account. You state the district has released some of the requested information. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.¹ We

¹Although you also raise section 552.024 of the Government Code, we note this section is not an exception to disclosure under the Act. Rather, this section permits a current or former official or employee of a governmental body to choose whether to allow public access to certain information relating to the current or former official or employee that is held by the employing governmental body. *See* Gov't Code § 552.024(a). Section 552.024 additionally authorizes a governmental body to redact the 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 this information be kept confidential without the necessity of requesting a decision from this office. *Id.* § 552.024(c); *see also id.* §§ 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to the requestor).

have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note the requestor seeks only the campus, home address and telephone number, school e-mail address, years of service, current salary, and dates of birth of district employees, and whether employees own 403(b) retirement accounts. You have submitted documents that contain information beyond these specific pieces of information. Thus, the portions of the submitted documents that do not consist of the campus, home address and telephone number, school e-mail address, years of service, current salary, or date of birth of a district employee, or whether an employee owns a 403(b) retirement account are not responsive to the present request. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release that information in response to the request.

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 common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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. *See id.* at 681-82. This office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee's mandatory contributions to a retirement program. *See* ORD 600. On the other hand, information is excepted from disclosure if it relates to a voluntary investment the employee made in an option benefits plan offered by the agency. *Id.* We note an individual's name is generally not private information under common-law privacy. *See* Open Records Decision No. 554 at 3 (1990) (disclosure of

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.

person's name, address, or telephone number not an invasion of privacy). You state "403(b) retirement accounts are funded solely by the deductions from the employees' earnings." Thus, you state information about a 403(b) account is not a financial transaction between an individual and a governmental body. Upon review, we agree information revealing whether an individual owns a 403(b) account is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold information identifying which employees have 403(b) retirement accounts, which we have marked, under section 552.101 of the Government Code in conjunction with 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." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *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 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals at issue timely requested confidentiality under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).

In summary, the district must withhold information identifying which employees have 403(b) retirement accounts, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the marked dates of birth of public employees under section 552.102(a) of the Government Code. To the extent the individuals at issue timely requested confidentiality under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining requested information must be released.

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/tf

Ref: ID# 416245

Enc. Submitted documents

c: Requestor
(w/o enclosures)