



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 11, 2011

Mr. William M. Buechler  
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OR2011-09773

Dear Mr. Buechler:

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# 423461 (PIR # 2011-16).

The Crowley Independent School District (the "district"), which you represent, received a request for the employment history, personnel records, performance evaluations, and corrective action pertaining to a named district employee. You state the district will provide some of the requested information to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture,

or other imposition, or offense[.]” 26 U.S.C. § 6103(b)(2)(A). Federal courts have construed the term “return information” expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp. 748, 754 (M.D.N.C. 1989), *dismissed in part, aff’d in part, vacated in part, and remanded*, 993 F.2d 1111 (4th Cir. 1993).

Subsections (c) and (e) of section 6103 are exceptions to the confidentiality provisions of section 6103(a) and provide for disclosure of tax information to the taxpayer or the taxpayer’s designee. *See* 26 U.S.C. § 6103(c), (e)(1)(A)(i) (tax return information may be disclosed to taxpayer), (e)(7) (information may be disclosed to any person authorized by subsection(e) to obtain such information if Secretary of Treasury determines such disclosure would not seriously impair tax administration); *see also Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (section 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual’s right of access under the federal Freedom of Information Act). Section 6103(c) provides, unless the Secretary of Treasury determines that disclosure would seriously impair tax administration, tax record information may be released to any person or persons as the taxpayer may designate in a consent to such disclosure. *See* 26 U.S.C. § 6103(c). We note the requestor is the spouse of the named employee and may be the named employee’s designee. Therefore, pursuant to section 6103(c) of title 26 of the United States Code, the district must release the named employee’s W-4 form, which we have marked, to the requestor if the requestor is the named employee’s designee. If the requestor is not the named employee’s designee, then the marked W-4 form is confidential under section 6103 of title 26 of the United States Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information that (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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. This office has also found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* ORD 600 (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy).

Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must generally withhold the information we have marked pursuant to section 552.101 of the Government

Code in conjunction with common-law privacy. We note, however, that the requestor is the spouse of the named employee to whom the marked information pertains and may have a right of access to this information. *See* Gov't Code § 552.023(b) ("person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests"). Thus, if the requestor is acting as the authorized representative of the named employee, then he has a right of access to the marked information pursuant to section 552.023(b), and this information may not be withheld from him under section 552.101 in conjunction with common-law privacy. If the requestor is not acting as the authorized representative of the named employee, then the district must withhold the marked information under section 552.101 in conjunction with common-law privacy.

You claim some of the submitted information is excepted from disclosure under section 552.102(a) of the Government Code. Section 552.102(a) 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). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 at \*5 (Tex. Dec. 3, 2010). The Texas Supreme Court then considered the applicability of section 552.102, and 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. *Id.* at \*10. Upon review, we find the information we have marked must generally be withheld under section 552.102(a). However, we note section 552.102(a) also states that "all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative." Gov't Code § 552.102(a). As noted above, the requestor is the spouse of the named employee. Accordingly, if the requestor is acting as the named employee's designated representative, then the information we have marked may not be withheld from him under section 552.102(a).

You claim portions of the submitted college transcript are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from higher education transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. *Id.* § 552.102(b); Open Records Decision No. 526 (1989). Upon review, we agree the submitted transcript falls within the scope of section 552.102(b). We note, however, this

exception protects personal privacy. Thus, if the requestor is acting as the named employee's authorized representative, he has a right of access to the submitted transcript under section 552.023 of the Government Code, and it may not be withheld from him under section 552.102(b). *See* Gov't Code § 552.023. However, if the requestor is not acting as the named employee's authorized representative, the district must withhold the submitted transcript under section 552.102(b) of the Government Code, except for the information that reveals the employee's name, the degree obtained, and the courses taken. *See* ORD 526 (addressing statutory predecessor). We note the district also seeks to withhold grade-point averages contained in documents other than a transcript under this exception. This information does not constitute a transcript and may not be withheld under section 552.102(b) of the Government Code. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)); Open Records Decision No. 622 (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 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. You state the named employee made a timely election under section 552.024. However, we note section 552.117(a)(1) is intended to protect personal privacy. As previously noted, the requestor is the spouse of the named employee and may be acting as her authorized representative. If the requestor is acting as the authorized representative of the named employee, then the district may not withhold the named employee's personal information under section 552.117(a)(1) of the Government Code. *See* Gov't Code § 552.023. If the requestor is not acting as the authorized representative of the named employee, then the district must withhold the named employee's personal information, which we have marked, under section 552.117(a)(1) of the Government Code.

We have also marked the personal information of a district employee other than the named employee. If this second district employee made a timely election under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). If the second district employee did not make a timely election under section 552.024, this information may not be withheld under section 552.117(a)(1).

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration is excepted from public release. Act of May 24, 2011, 82<sup>nd</sup> Leg., R.S., S.B. 1638, § 4 (to be codified as

an amendment to Gov't Code § 552.130(a)). Section 552.130 is intended to protect the privacy interests of individuals. Thus, if the requestor is acting as the named employee's authorized representative, he has a right to his spouse's driver's license number pursuant to section 552.023 of the Government Code, and it may not be withheld from him. *See* Gov't Code § 552.023. If the requestor is not acting as the named employee's authorized representative, the district must withhold the driver's license number we have marked under section 552.130 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). *Id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c) of the Government Code. However, section 552.137 is also intended to protect privacy interests. Therefore, if the requestor is acting as the named employee's authorized representative, the requestor has a right of access to the e-mail address you have marked under section 552.023 of the Government Code, and it may not be withheld from him. *See id.* § 552.023. If the requestor is not acting as the named employee's authorized representative, the district must withhold the e-mail address you have marked under section 552.137 of the Government Code, unless the owner has consented to its release.

In summary, the district must withhold the marked personal information of the second district employee under section 552.117(a)(1) of the Government Code if that employee made a timely election under section 552.024 of the Government Code. If the requestor is acting as the designee and authorized representative of the named employee, then the district must release the remaining submitted information to him pursuant to section 6103(c) of title 26 of the United States Code and section 552.023 of the Government Code.<sup>1</sup> If the requestor is not acting as the designee or authorized representative of the named employee, then the district must withhold (1) the marked W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (2) the information we have marked under section 552.101 in conjunction with common-law privacy; (3) the information we have marked under section 552.102(a) of the Government Code; (4) the submitted transcript, except for the information that reveals the employee's name, the degree obtained, and the courses taken, under section 552.102(b) of the Government Code; (5) the information we have marked under section 552.117(a)(1) of the Government Code that pertains to the named employee; (6) the driver's license number we have marked under section 552.130 of the Government Code; and (7) the e-mail address you have marked under section 552.137 of the Government Code, unless the owner has consented to its release. The remaining information must be released.

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<sup>1</sup>Because the requestor has a right of access to certain information that otherwise would be excepted from release under the Act, the district must again seek a decision from this office if it receives a request for this information from a different 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](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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/dls

Ref: ID# 423461

Enc. Submitted documents

c: Requestor  
(w/o enclosures)