



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 17, 2014

Mr. Jaime J. Muñoz  
Law Office of Jaime J. Muñoz  
P.O. Box 47  
San Juan, Texas 78589

OR2014-01156

Dear Mr. Muñoz:

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# 511438.

The La Joya Independent School District (the "district"), which you represent, received a request for thirty-seven categories of information pertaining to named district employees, district school ratings and action plans, district employee rosters, raises, new positions, job descriptions, specified positions, specified recommendations, board members, vendors, and a specified presentation. You state you have released some of the requested information to the requestor. You state you will withhold information subject to section 552.117 of the Government Code.<sup>1</sup> You claim portions of the requested information are not subject to the Act. Additionally, you claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.116, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you contend that certain categories of requested information do not exist or require the district to provide reasons or answer questions. We note that, in responding to a request for information under the Act, a governmental body is not required to answer factual questions, conduct legal research, or create responsive information that does not exist at the

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<sup>1</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. See Gov't Code § 552.024(c)(2).

time the request was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1 (1990). Additionally, the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *See Economic Opportunities Dev. Corp.*, 562 S.W.2d 266; *see also* Open Records Decision Nos. 452 at 3 (1986), 362 at 2 (1983). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume the district has made a good-faith effort to do so.

Next, you acknowledge you have not submitted any information responsive to the requested phone logs of two named district employees. Therefore, to the extent information responsive to this aspect of the request exists, we assume you have released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

You assert the employee identification numbers contained in the submitted documents are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office that the employee identification numbers are “used to access the district’s confidential computer databases and have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information.” Based on your representations and our review, we find the employee identification numbers contained in the submitted documents do not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the employee identification numbers are not subject to the Act and need not be released to the requestor.<sup>2</sup>

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 laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the National

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<sup>2</sup>As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

Crime Information Center network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov't Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Upon review, we find you have failed to demonstrate how any portion of the information at issue constitutes CHRI for purposes of chapter 411 or federal law. Therefore, the district may not withhold any of the information at issue under section 552.101 of the Government Code on this basis.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides in part that "[a] document evaluating the performance of a teacher or administrator is confidential."<sup>3</sup> Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). Upon review, we find you have failed to demonstrate how any of the remaining information consists of documents evaluating the performance of a teacher or an administrator for purposes of section 21.355 of the Education Code. Therefore, the district may not withhold any of the remaining information on that basis under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. In addition, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage,

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<sup>3</sup>Although you cite to section 21.344 of the Education Code in your brief, we understand you to argue section 21.355 based on the substance of your argument.

mortgage payments, assets, bills, and credit history). This office has also determined a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987), 444 at 5-6 (1986), 432 at 2 (1984). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, the district has failed to demonstrate how the remaining information at issue is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

Section 552.116 of the Government Code provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the information you have indicated was prepared by a campus intervention team that was “conducting a comprehensive on-site evaluation of the campus to determine the cause for the campus’s low performance, recommending actions to address the low performance, assisting in the development of a school improvement plan for student achievement, and assisting the commissioner in monitoring the progress of the campus in implementing the school improvement plan.” We understand that the evaluations are authorized by section 39.106 of the Education Code.<sup>4</sup> *See* Educ. Code § 39.106 (defining scope and duties of a campus intervention team). We note, however, section 552.116 is intended to protect the auditor’s interests. The information at issue is maintained by the district, who we understand is the auditee. As the auditee, the district cannot assert section 552.116 in order to protect its own interest in withholding the information. Thus, section 552.116 is not applicable, and the district may not withhold any of the information you have indicated under section 552.116 of the Government Code.

Section 552.136(b) of the Government Code states “Notwithstanding any other provision of [the Act], 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.” Gov’t Code § 552.136(b). Upon review, we find none of the remaining information consists of access device numbers for the purposes of section 552.136 of the Government Code. *See id.* § 552.136(a) (defining “access device”). Accordingly, none of the remaining information may be withheld on that basis.

Section 552.147(a-1) of the Government Code provides, “[t]he social security number of an employee of a school district in the custody of the district is confidential.” *Id.* § 552.147(a-1). The Eighty-third Texas Legislature amended section 552.147 to make the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *See id.* § 552.024(a-1) (a school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number). Accordingly, the district must withhold the social security number of the district employee, which we have marked, under section 552.147(a-1) of the Government Code.

We note some of the remaining information appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted

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<sup>4</sup>Although you cite to sections 39.1322 and 39.1323 of the Education Code in your brief, we note these sections were recodified as section 39.106 of the Education Code.

by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the employee identification numbers are not subject to the Act and need not be released to the requestor. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.147(a-1) of the Government Code. The remaining information must be released; however, any information protected by copyright may only be released in accordance with copyright law.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/tch

Ref: ID# 511438

Enc. Submitted documents

c: Requestor  
(w/o enclosures)