



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2014

Ms. Melanie L. Hollman
Counsel for the Ector County Independent School District
Atkins, Hollman, Jones, Peacock, Lewis & Lyon
3800 East 42nd Street, Suite 500
Odessa, Texas 79762

OR2014-14693

Dear Ms. Hollman:

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# 533509.

The Ector County Independent School District (the "district"), which you represent, received a request for the personnel files of three specified employees and two specified resignation letters. You state the district has provided some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state Attachment A concerns a concluded criminal investigation by the district's police department that did not result in a conviction or deferred adjudication. Based on this representation, we find section 552.108(a)(2) is applicable to Attachment A.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing the types of information considered to be basic information). We note basic information includes the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. *Id.* We further note basic information does not include information related to a witness or to a suspect who was not arrested. *Id.* Thus, with the exception of basic information, which must be released, the department may withhold Attachment A under section 552.108(a)(2) of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of 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 satisfied. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find no portion of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.102(b) excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee's name, the courses taken, and the degree obtained from disclosure. Gov’t Code § 552.102(b); *see also* Open Records Decision No. 526 (1989). You seek to withhold portions of Attachment B under section 552.102(b). However, upon review, we find none of the information at issue consists of higher education transcripts of a professional public school employee. Therefore, the district may not withhold any of the remaining information under section 552.102(b) of the Government Code.

Section 552.117(a)(1) 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, except as

provided by section 552.024(a-1).¹ See Gov't Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, "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." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). 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. Therefore, if the individuals at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the district may only withhold the cellular telephone number we have marked if it is not paid for by a government body. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold any of the marked information under section 552.117(a)(1) 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). See Gov't Code § 552.137(a)-(c). Accordingly, the district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, with the exception of basic information, the district may withhold Attachment A under section 552.108(a)(2) of the Government Code. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the individuals at issue are current or former employees of the district and to the extent those individuals timely elected to keep their information confidential pursuant to section 552.024 of the Government Code; however, the district may only withhold the marked cellular telephone number if it is not paid for by a governmental body. The district must withhold

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district must release the remaining information.

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, 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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 533509

Enc. Submitted documents

c: Requestor
(w/o enclosures)