



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 8, 2014

Ms. Ramona Soto
Attorney
Fort Worth Independent School District
100 North University Drive, Suite SW 172
Fort Worth, Texas 76107

OR2014-15702

Dear Ms. Soto:

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# 535467.

The Fort Worth Independent School District (the "district") received a request for: (1) the names and locations of all employees who have a FICA Alternative retirement savings plan ("FICA plan") and have been employed during a specified time period; (2) the names and locations of all employees contributing to a section 403(b) retirement plan ("403(b) plan") and the providers they are making contributions to since a specified date; and (3) the names and locations of all individuals hired by the district during a specified time period. You state the district has released the information responsive to category three. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.143 of the Government Code. You also state that release of the submitted information may implicate the proprietary interests of TCG Group Holding, L.L.P. ("TCG"). You notified TCG of this request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of

exception to disclosure under certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request for information. This ruling does not address the public availability of the non-responsive information, and that information need not be released.

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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision No. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Thus, a public employee’s allocation of his salary to a voluntary investment program offered by his employer is a personal investment decision, and information about that decision is excepted from disclosure by common-law privacy. You state “[c]ontributions to FICA plans are made exclusively by the employee[.]” and the 403(b) plans are “funded entirely through employee payroll deductions[.]” Based on your representations and our review, we conclude the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. As our ruling is dispositive, we need not address your remaining argument.

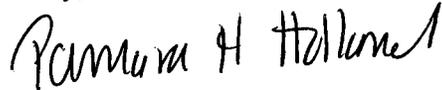
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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

¹As of the date of this letter, this office has not received comments from TCG explaining why the information at issue should not be released.

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 that reads "Tamara H. Holland". The signature is written in a cursive style with a large initial "T".

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ds

Ref: ID# 535467

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Scott Hauptmann
TCG Group Holding, LLP
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Austin, Texas 78746
(w/o enclosures)