



January 20, 2015

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

OR2015-01022

Dear Ms. Hollmann:

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# 551229.

The Ector County Independent School District (the "district"), which you represent, received a request for the personnel file of a named district police officer and specified information pertaining to the officer and another named individual. The district states it has provided some of the requested information to the requestor, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.1175 and of the Government Code. We have considered the claimed exceptions 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. 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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). However, the public interest in a public employee's prior salary justifies disclosure, as such information bears on the employee's past employment record and suitability for the employment position in question. *See* Open Records Decision No. 455 at 9 (1987). Upon review, we find some of the submitted information, which we have marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we conclude the remaining information is not confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

We note the submitted information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.¹ 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). The Texas Supreme Court has 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.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.²

Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov't Code § 552.1175. Section 552.1175 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Although you seek to withhold information pertaining to the named district police officer under section 552.1175, the district holds the submitted information in the officer's employment capacity. Thus, the district may not withhold any of the information pertaining to the named district police officer under section 552.1175. However, the remaining documents contain the cellular telephone number, which we have marked, of a peace officer who does not work for the district. Thus, the district must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code if the peace officer at issue elects to restrict access to his information in accordance with

¹The Office of the Attorney General will raise a mandatory exception like section 552.102 on behalf of a governmental body, but ordinarily will not raise other exceptions.

²As our ruling is dispositive, we do not address your other argument to withhold this information.

section 552.1175(b) of the Government Code and if the cellular telephone service was not provided to him at public expense.

Nevertheless, we note section 552.117(a)(2) of the Government Code is applicable to information pertaining to the named district police officer. Section 552.117(a)(2) excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.³ Gov't Code § 552.117(a)(2). Section 552.117 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular telephone service. *See* ORD 506 at 5-6. However, section 552.117 is not applicable to information pertaining to a former spouse or the fact that a governmental employee has been divorced. The district must withhold the information we have marked under section 552.117(a)(2) of the Government Code; however, the district may only withhold the cellular telephone number we have marked under section 552.117(a)(2) if the cellular telephone service was not provided to the employee at issue at public expense.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. The district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

The submitted information contains an insurance policy number. Section 552.136(b) of the Government Code provides, "[n]otwithstanding any other provision of this chapter, 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." *Id.* § 552.136(b). This office has determined an insurance policy number is an access device number for purposes of section 552.136. Open Records Decision No. 684 at 9 (2009). Thus, the district must withhold the insurance policy number you have marked under section 552.136 of the Government Code.

The remaining information contains e-mail addresses of members of the public. 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). Section 552.137 does not apply to a government employee's work e-mail

³"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). The district does not inform us a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the district must withhold the e-mail addresses you have marked under section 552.137 of the Government Code.

To conclude, the district must withhold the following: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we have marked under sections 552.102(a), 552.117(a)(2), and 552.130 of the Government Code; however, the district may only withhold the cellular telephone number we have marked under section 552.117(a)(2) if the cellular telephone service was not provided to the employee at issue at public expense; (3) the insurance policy number you have marked under section 552.136 of the Government Code; and (4) the e-mail addresses you have marked under section 552.137 of the Government Code. The district must withhold the cellular telephone number we have marked under section 552.1175 of the Government Code if the peace officer at issue elects to restrict access to this information in accordance with section 552.1175(b) of the Government Code and if the cellular telephone service was not provided to the officer at issue at public expense. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 551229

Enc. Submitted documents

c: Requestor
(w/o enclosures)