



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

April 8, 2015

Mr. Hector M. Benavidas  
Counsel for the Kingsville Independent School District  
Walsh, Anderson, Gallegos, Green and Trevino, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2015-06682

Dear Mr. Benavidas:

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# 559106.

The Kingsville Independent School District (the "district"), which you represent, received a request for the payroll of the district for a specified time period and all pay grades of the district. The district states it has released some of the requested information. The district claims some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.136, and 552.139 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted representative sample of information.<sup>1</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." *See* 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

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 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 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). Upon review, we find the information the district has marked, and the additional information we have marked, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information it has marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>2</sup>

Section 552.139 of the Government Code provides:

(a) Information is excepted from [required public disclosure] if it is information that relates to computer network security, to restricted information under Section 2059.055 [of the Government Code], or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; [and]

(2) any other assessment of the extent to which data processing operations, a computer, a computer program, network, system, or system interface, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information containing sensitive or critical information is vulnerable to alteration, damage, erasure, or inappropriate use[.]

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<sup>2</sup>As our ruling is dispositive, we need not address the district's remaining argument against disclosure of this information.

Gov't Code § 552.139(a), (b)(1)-(2). Section 2059.055 of the Government Code provides in pertinent part:

(b) Network security information is confidential under this section if the information is:

- (1) related to passwords, personal identification numbers, access codes, encryption, or other components of the security system of a state agency;
- (2) collected, assembled, or maintained by or for a governmental entity to prevent, detect, or investigate criminal activity; or
- (3) related to an assessment, made by or for a governmental entity or maintained by a governmental entity, of the vulnerability of a network to criminal activity.

*Id.* § 2059.055(b). The district states it assigns each employee a unique employee identification number. The district explains a district employee may use this number in conjunction with a password to access district software program systems, including an e-mail account, network information, and the system used by the district for tracking time worked and determining employees' pay. Accordingly, the district must withhold the employee identification numbers it has marked under section 552.139(a) of the Government Code.<sup>3</sup>

In summary, the district must withhold the information it has marked, and the additional information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the employee numbers it has marked under section 552.139(a) of the Government Code. The remaining information must be released.

The district asks this office to issue previous determinations permitting the district to withhold certain payroll information under section 552.101 of the Government Code in conjunction with common-law privacy and employee identification numbers under section 552.139 of the Government Code, without seeking a ruling from this office. *See id.* § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). At this time, we decline to issue a previous determination with respect to the payroll information under section 552.101 of the Government Code in conjunction with common-law privacy. However, after due consideration, we have decided to grant the district's request for a

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

previous determination with respect to the employee identification numbers under section 552.139 of the Government Code. Therefore, this letter ruling serves as a previous determination under section 552.301(a) authorizing the district to withhold employee identification numbers under section 552.139 of the Government Code. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the district need not ask for a decision from this office again with respect to this type of information. *See* ORD 673 at 7.

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 559106

Enc. Submitted documents

c: Requestor  
(w/o enclosures)