



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 22, 2015

Dr. Cornelio Gonzalez
Executive Director
Region One Education Service Center
1900 West Schunior Street
Edinburg, Texas 78541

OR2015-10070

Dear Dr. Gonzalez:

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# 564591.

The Region One Education Service Center (the "center") received a request for an "updated list of all professional personnel." You claim the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 section 825.507 of the Government Code, which provides, in relevant part:

(a) Records of a participant and information about the records of a participant that are in the custody of [the Teacher Retirement System ("TRS")] or of an administrator, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in cooperation with or on behalf of [TRS] are confidential and not subject to public disclosure. Because the records and information described by this section are exempt from the public access provisions of [the Act], [TRS] or an administering firm, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in

cooperation with or on behalf of [TRS], is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, except as otherwise provided by this section.

...

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of [TRS.]

Id. § 825.507(a), (g). You contend the submitted information is confidential because it constitutes records of center employees who are also participants in TRS. You inform us all the listed employees are TRS participants. You further inform us that the center acts in cooperation with TRS by contributing to TRS on behalf of the employees, by holding the submitted information on behalf of TRS, and by locally administering the employees' contributions and deductions. In this instance, however, the information at issue consists of a spreadsheet listing information for employees such as campus name, employee name, date of birth, home address, job description, salary, e-mail address, and cell phone number. We find the submitted information concerns the center employees only in their capacities as employees. Thus, upon review, we find the submitted information consists of the center's personnel or payroll records, rather than "records of a participant that are in the custody of . . . a governmental agency . . . acting in cooperation with or on behalf of" TRS. *Id.* § 825.507(a). Further, we note section 825.507(c) provides that section 825.507 does not prevent disclosure of the identity of a participant as a member of a retirement system. *See id.* § 825.507(c). Therefore, we find you have failed to demonstrate the submitted information consists of records of a participant in TRS that are in the custody of the center in cooperation with TRS. Accordingly, the center may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 825.507(a) of the Government Code.

Section 552.102(a) of the Government Code 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 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). Upon review, we find the center must withhold the submitted dates of birth under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government

Code.¹ *See* Gov't Code § 552.117(a)(1). We note section 552.117 is also applicable to personal 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) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the center must withhold the information we have indicated under section 552.117(a)(1) of the Government Code; however, the center may not withhold the cellular telephone numbers if the service is paid for by a governmental body. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the center may not withhold the information we have indicated under section 552.117(a)(1).

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). The e-mail addresses we have indicated are not excluded by subsection (c), and we have no indication the owners have consented to release of their e-mail addresses. Accordingly, the center must withhold the e-mail addresses we have indicated under section 552.137 of the Government Code.

In summary, the center must withhold the submitted dates of birth under section 552.102(a) of the Government Code. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the center must withhold the information we have indicated under section 552.117(a)(1) of the Government Code; however, the center may not withhold the cellular telephone numbers if the service is paid for by a governmental body. The center must withhold the e-mail addresses we have indicated under section 552.137 of the Government Code. The center must release the remaining information.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 564591

Enc. Submitted documents

c: Requestor
(w/o enclosures)