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ATTORNEY GENERAL OF TEXAS

May 28, 2015

Mr. Jaime J. Muñoz
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OR2015-10383

Dear Mr. Muñoz:

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# 566469.

The La Joya Independent School District (the "district"), which you represent, received a request for the personnel file and salary and title history of a named district employee. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district has redacted employee names and social security numbers from the submitted information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code § 552.147(b)*. However, you do not assert, nor does our review of our records indicate, the district is authorized to withhold employee names without first seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). Rather, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we will address its public availability. In the future, the district should refrain from redacting responsive information that it submits to this office in connection with a request for an open records ruling, unless the information is the subject of

a previous determination under section 552.301 of the Government Code or may be withheld pursuant to statutory authority. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to do so may result in the presumption the redacted information is public. *See id.* § 552.302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses section 1304(b) of title 8 of the United States Code, which addresses the confidentiality of the registration documentation of aliens under section 1301 of the United States Code. Section 1304(b) provides, “All registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only (1) pursuant to section 1357(f)(2) of this title, and (2) to such persons or agencies as may be designated by the Attorney General.” 8 U.S.C. § 1304(b). Section 264.1(b) of title 8 of the Code of Federal Regulations lists permanent resident cards as documents that constitute evidence of registration. 8 C.F.R. § 264.1 (b). Therefore, we find the submitted permanent resident card, which we have marked, is a registration record subject to the confidentiality provision of section 1304(b) of title 8 of the United States Code. Furthermore, we find the alien registration number we have marked is confidential under section 1304(b) of tile 8 of the United States Code. Accordingly, the district must withhold the permanent resident card and alien registration number we have marked under section 552.101 of the Government Code in conjunction with section 1304(b) of the United States Code.

Section 552.101 encompasses section 21.048 of the Education Code, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

(c-1) The results of an examination administered under this section are confidential and are not subject to disclosure under Chapter 552, Government Code, unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

Educ. Code § 21.048(c-1). Upon review, we find the information we have marked may reflect the results of examinations administered under section 21.048 of the Education Code. You state subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Thus, to the extent the information we have marked reflects the results of examinations administered under section 21.048, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. However, if the information we have marked does not reflect the results of examinations administered under section 21.048, then the district may not withhold the information we have marked under section 552.101 in conjunction with section 21.048(c-1). Furthermore, we find the remaining information does not consist of the results of

examinations administered under section 21.048, and the district may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked meets 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.

Section 552.102(b) of the Government Code excepts from disclosure all information in a higher education transcript of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the college transcripts we have marked under section 552.102(b) 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[.]"¹ 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). Thus, the district must withhold the date of birth we have marked under section 552.102(a) of the Government Code.

Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former employees or officials of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). 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.*

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

§ 552.024(a-1). Thus, a school 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. 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. 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). But an individual's personal post office box number is not a "home address" for purposes of section 552.117 and may not be withheld under section 552.117. *See* Open Records Decision No. 622 at 6 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). Therefore, to the extent the individuals whose information is 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 not withhold the cellular telephone numbers we have marked if the cellular telephone service was paid for by a governmental body. Conversely, to the extent the individuals whose information is at issue did not timely request confidentiality under section 552.024, the district may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

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(a). The district must withhold the motor vehicle record information we have marked under section 552.130 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 id.* § 552.137(a)-(c). The e-mail addresses at issue are not of a type excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

Section 552.147(a-1) of the Government Code provides, "The social security number of an employee of a school district in the custody of the district is confidential." *Id.* § 552.147(a-1).

The Eighty-third Texas Legislature amended section 552.147 to make the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *See id.* § 552.024(a-1) (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). The legislative history of sections 552.024(a-1) and 552.147(a-1) reflects that the protection afforded by section 552.147(a-1) was intended to extend to both current and former school district employees. *See* House Comm. on Gov't Efficiency and Reform, Bill Analysis, Tex. H.B. 2961, 83rd Leg., R.S. (2013) ("H.B. 2961 seeks to protect the social security number of a school district employee or former employee from public disclosure."). Thus, when reading sections 552.024(a-1) and 552.147(a-1) together, and upon review of the legislative history of these two amendments, we conclude section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Accordingly, the district must withhold the social security numbers we have marked under section 552.147(a-1) of the Government Code.

In summary, the district must withhold the permanent resident card and alien registration number we have marked under section 552.101 of the Government Code in conjunction with section 1304(b) of title 8 of the United States Code. To the extent the information we have marked reflects the results of examinations administered under section 21.048, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the college transcripts we have marked under section 552.102(b) of the Government Code. The district must withhold the date of birth we have marked under section 552.102(a) of the Government Code. To the extent the individuals whose information is 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 not withhold the cellular telephone numbers we have marked if the cellular telephone service was paid for by a governmental body. The district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The district must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district must withhold the social security numbers we have marked under section 552.147(a-1) of the Government Code. The remaining information must be released.

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,



Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 566469

Enc. Submitted documents

c: Requestor
(w/o enclosures)