



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

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OR2015-13177

Dear Ms. Benavides:

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# 569408.

The Sharyland Independent School District (the "district"), which you represent, received a request for the following information: 1) the names of all substitute teachers during a specified time period, 2) names of all substitute teachers who were inactivated during a specified time period and the reasons for the inactivations, 3) requests for inactivation of substitute teachers sent by district principals during a specified time period, 4) two specified board policies, 5) information regarding how a specified memorandum was sent and received; 6) whether a specified incident was reported to Child Protective Services and a copy of the complaint, 7) specified information regarding a named district employee, 8) whether a named individual is still a district employee, and 9) the work addresses of two named district employees. You state the district released some information to the requestor. You further state the district does not have information responsive to portions of the request.<sup>1</sup> Finally, we understand the district will comply with section 552.232 of the Government Code with respect to information the district has previously released to the requestor. *See Gov't Code § 552.232* (prescribing procedures for response to repetitious or redundant request for

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<sup>1</sup>The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

information). You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. Additionally, you state the district notified an interested party of the request for information and of the individual's right to submit written comments to this office stating why information should or should not be released. *See Gov't Code § 552.304.*<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

You indicate the district is seeking clarification of a portion of the request for information, and we understand the district has not yet received clarification on this portion of the request. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Therefore, this decision does not address the public availability of any information pertaining to the portion of the present request that is encompassed by the district's request for clarification. If the district receives clarification of the other portion of the request and seeks to withhold any information responsive to the clarified request, the district should request another ruling. *See Gov't Code §§ 552.301(a), .302.*

Next, you indicate the requestor has asked the district to answer questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990).* However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See Open Records Decision No. 561 at 8 (1990).* We assume the district has made a good faith effort to do so.

You assert a district employee's address, home and cellular telephone numbers, e-mail address, and social security number are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision[.]" and encompasses information protected by other statutes, such as section 22.08391 of the Education Code. Gov't Code § 552.101. Subchapter C of chapter 22 of the Education Code addresses criminal history records of school district employees and volunteers. Section 22.08391 provides in part:

- (a) Information collected about a person to comply with this subchapter, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records:

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<sup>2</sup>As of the date of this ruling, we have not received any comments from the interested party.

- (1) may not be released except:
  - (A) to comply with this subchapter;
  - (B) by court order; or
  - (C) with the consent of the person who is the subject of the information;
- (2) is not subject to disclosure as provided by [the Act]; and
- (3) shall be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received.

Educ. Code § 22.08391(a). Thus, except in the specified circumstances, section 22.08391 prohibits the release of information about a person collected in order to conduct a criminal history record search. Upon review, we find the district has failed to demonstrate the information at issue was collected about an employment applicant for purposes of conducting a criminal history record search. Accordingly, we conclude the information at issue is not confidential under section 22.08391 of the Education Code and the district may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 21.048 of the Education Code, which provides, in relevant part, the following:

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). We have marked a teacher's certification exam results in the remaining information. We understand subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Accordingly, we find the information we have marked is confidential pursuant to section 21.048(c-1) of the Education Code, and must be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses information protected by 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. The doctrine of common-law privacy protects a compilation of an individual's criminal history, which is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Upon review, we find some of the submitted information 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.

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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Upon review, we find the district must withhold the employee's date of birth, which we have marked, under section 552.102(a) of the Government Code. However, none of the remaining information may be withheld on that basis.

Section 552.102(b) of the Government Code excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee's

name, the courses taken, and the degree obtained from disclosure. Gov't Code § 552.102(b); *see also* Open Records Decision No. 526 (1989). Accordingly, with the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the submitted college transcript, which we have marked, pursuant to section 552.102(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1).<sup>3</sup> *See* Gov't Code §§ 552.117(a)(1), .024. 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.* § 552.024(a-1). Thus, the district may withhold under section 552.117 only 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. 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 piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Consequently, information may only be withheld under section 552.117(a)(1) on behalf of a current or former district employee 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 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, any cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).

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<sup>3</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 address at issue is not excluded by subsection (c). Therefore, the district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its 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). Thus, section 552.147(a-1) makes 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. *Id.* § 552.024(a-1). Reading sections 552.024(a-1) and 552.147(a-1) together, 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 information we have marked under section 552.147(a-1) of the Government Code.

In summary, the district must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the employee’s certification test results we have marked under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code; (3) the employee’s date of birth we have marked under section 552.102(a) of the Government Code; and (4) the college transcript we have marked pursuant to section 552.102(b) of the Government Code, with the exception of the employee’s name, courses taken, and degrees obtained. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code, provided the individuals whose personal information is at issue timely requested confidentiality under section 552.024 of the Government Code; however, any cellular telephone numbers may be withheld only if the cellular telephone service is not paid for by a governmental body. The district must withhold the information we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its disclosure. The district must withhold the information we have marked under section 552.147(a-1) of the Government Code. 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,



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Open Records Division

KLG/cz

Ref: ID# 569408

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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