



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2015

Mr. W. Lee Auvenshine, J.D.
Deputy Superintendent
Human Resources & Legal Services
Waxahachie Independent School District
411 North Gibson Street
Waxahachie, Texas 75165

OR2015-16448

Dear Mr. Auvenshine:

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# 574673.

The Waxahachie Independent School District (the "district") received a request for 1) all e-mails between two named individuals spanning from a specified date range, 2) the job applications of seven named individuals, and 3) the employment contracts of the seven named individuals. The district states it has released some information. The district claims portions of the submitted information are excepted from disclosure under sections 552.102, 552.117, 552.130, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions the district claims and reviewed the submitted information.

Initially, we note the district has not submitted any information responsive to the first item in the request. Thus, to the extent any e-mails between the named individuals, within the specified date range, existed when the present request was received, we assume they have been released. If such information has not been released, then it must be released at this time. *See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000)*

¹Although the district raises section 552.101 of the Government Code, the district makes no arguments to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. *See Gov't Code §§ 552.301, .302.*

(if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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). Accordingly, the district must withhold the dates of birth it has marked, and the additional date of birth we have marked, under section 552.102 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.* § 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 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. We understand the individuals at issue timely requested confidentiality under section 552.024 of the Government Code. Therefore, the district must withhold the information it has 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. Accordingly, the district must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code.

Section 552.137 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). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the district must withhold the e-mail addresses it has marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or if subsection (c) applies.

Section 552.147(a-1) of the Government Code provides, “[t]he 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) (school district may not require employee or former employee of district to choose whether to allow public access to employee’s or former employee’s social security number). 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. Therefore, the district must withhold the social security numbers it has marked under section 552.147(a-1) of the Government Code.

In summary, the district must withhold the dates of birth it has marked, and the additional date of birth we have marked, under section 552.102 of the Government Code. The district must withhold the information it has marked under section 552.117(a)(1) of the Government Code. The district must withhold the motor vehicle record information it has marked under section 552.130 of the Government Code. The district must withhold the e-mail addresses it has marked under section 552.137 of the Government Code, unless their owners affirmatively consent to their public disclosure or if subsection (c) applies. The district must withhold the social security numbers it has 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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

Ref: ID# 574673

Enc. Submitted documents

c: Requestor
(w/o enclosures)