



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 3, 2015

Ms. Jeanne C. Collins  
General Counsel  
El Paso Independent School District  
6531 Boeing Drive  
El Paso, Texas 79925

OR2015-25262

Dear Ms. Collins:

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# 589017 (EPISD ORR# 2015.386).

The El Paso Independent School District (the "district") received a request for multiple categories of information pertaining to district employees. You state you will release most of the requested information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-07317 (2015). In that ruling, we concluded the following: (1) the district must withhold the types of information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) 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 types of information we marked under section 552.117(a)(1) of the Government Code, but may not withhold cellular telephone numbers if a governmental body pays for the cellular service; and (3) the district must release the remaining information. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2015-07317 was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office,

the district must continue to rely on Open Records Letter No. 2015-07317 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by the previous ruling, we will address the submitted arguments.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” 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 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 or 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 excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history).

The submitted information contains information derived from the district’s payroll records. You state this information reveals the decisions of district employees to pay union dues through payroll deduction. You further state the decision to pay union dues through payroll deduction is a personal financial decision. Thus, we find the information reflecting an employee’s decision to pay union dues through payroll deduction, a representative sample of which we have marked, constitutes personal financial information in which there is no legitimate public interest. Accordingly, based on your arguments and our review, we agree the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is not highly intimate or embarrassing information, or is of legitimate public interest. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

We note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone

numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1).<sup>1</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). 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 individuals at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information at issue, a representative sample of which we have marked, under section 552.117(a)(1) of the Government Code. However, the district may only withhold the marked cellular telephone numbers if a governmental body did not pay for the service. 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) of the Government Code.

In summary, the extent the requested information is identical to the information previously requested and ruled upon by this office, the district must continue to rely on Open Records Letter No. 2015-07317 as a previous determination and withhold or release the identical information in accordance with that ruling. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals 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 only withhold the marked cellular telephone numbers if a governmental body did not pay for the service. The remaining information must be released.

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<sup>1</sup>The 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).

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](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# 589017

Enc. Submitted documents

c: Requestor  
(w/o enclosures)