



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

April 7, 2016

Mr. Rusty Meurer  
Counsel for the Laredo Community College  
Kazen, Meurer & Perez, L.L.P.  
P.O. Box 6237  
Laredo, Texas 78042-6237

OR2016-07822

Dear Mr. Meurer:

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# 604943.

The Laredo Community College (the "college"), which you represent, received a request for six categories of information pertaining to a specified job posting.<sup>1</sup> You state the college has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.137 of the Government Code. We have also received comments from a third party whose information is at issue. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have redacted social security numbers pursuant to section 552.147(b) of the Government Code, which 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 id.* § 552.147(b). However, the information you redacted includes the requestor's social security number. Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. *Id.* § 552.147(a). We note section 552.147 protects personal privacy. Accordingly, the requestor has a right of access

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<sup>1</sup>We note the college sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

to his redacted social security number under section 552.023 of the Government Code. *See generally id.* § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles). Accordingly, the college may not withhold the requestor's social security number under section 552.147.

We further note you have redacted dates of birth from the submitted information. You do not assert, nor does our review of our records indicate, the college has been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). As such, this 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 remaining redacted information, we will address its public availability. In the future, the college 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 552.102(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[.]" *Id.* § 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). We note the requestor has a right of access to his date of birth pursuant to section 552.023 of the Government Code. *See Gov't Code* § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, with the exception of the requestor's date of birth, the college must withhold the dates of birth of college employees you have marked under section 552.102(a).<sup>2</sup>

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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller. Paxton v. City of Dallas*,

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<sup>2</sup>As our ruling is dispositive, we need not address your arguments against disclosure of this information.

No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>3</sup> *Texas Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3. However, we note an individual's name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. *See* Open Records Decision Nos. 554 (1990), 448 (1986). Furthermore, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Additionally, we note the requestor has a right of access to his information that is otherwise protected by common-law privacy, including his date of birth, pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4.

Upon our review, we conclude, with the exception of the requestor's date of birth, the college must withhold the remaining public citizens' dates of birth under section 552.101 in conjunction with common-law privacy. However, we find you have failed to demonstrate the remaining information marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the college may not withhold the remaining information under section 552.101 on that basis.

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public-school employee[.]" Gov't Code § 552.102(b). You seek to withhold the transcripts of applicants for employment at the college. This office has interpreted "professional public school employee" to refer to employees of public schools providing "public education" under title 2 of the Education Code, not colleges and universities providing "higher education" under title 3 of the Education Code. The applicants at issue are not professional public school employees. Accordingly, the college may not withhold the submitted transcripts under section 552.102(b).

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

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<sup>3</sup>As noted above, section 552.102(a) 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).

Code. *See id.* § 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. We note section 552.117 protects personal privacy. Therefore, the requestor has a right of access to his own information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); ORD 481 at 4. We have marked the information of current and former college employees other than the requestor. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the college must withhold the information we have marked under section 552.117(a)(1), including the personal cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. The college may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

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). Gov't Code § 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). We note the requestor has a right of access to his own e-mail address under section 552.137(b). *See id.* § 552.137(b). Accordingly, the college must withhold the personal e-mail addresses we have marked under section 552.137, unless their owners affirmatively consent to their public disclosure.

We note some of the remaining information appears to be subject to copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, with the exception of the requestor's date of birth, the college must withhold the dates of birth of college employees you have marked under section 552.102(a) of the Government Code and the remaining public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. If the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, the college must withhold the information we have marked under section 552.117(a)(1) of the Government Code, including the personal cellular telephone numbers if the cellular telephone service is not paid for by a governmental body. The college must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless their owners have affirmatively consented to release. The college must release the remaining information; however, any information protected by copyright may only be released in accordance with copyright law.<sup>4</sup>

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,



Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/dls

Ref: ID# 604943

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note the requestor has a right of access beyond that of the general public to some of the information being released. See Gov't Code §§ 552.023(a), .137(b); ORD 481 at 4. Accordingly, if the college receives another request for this information from an individual other than this requestor, the college must again seek a ruling from this office.