



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 25, 2016

Mr. John A. Kazen  
Counsel for Laredo I.S.D.  
Kazen, Meurer & Pérez, L.L.P.  
P.O. Box 6237  
Laredo, Texas 78042-6237

OR2016-12023

Dear Mr. Kazen:

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# 611666.

The Laredo Independent School District (the "district"), which you represent, received a request for specified information pertaining to employees, including dates of birth and gender. The district states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

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). The Texas Supreme Court has 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 agree the district must withhold the submitted dates of birth under section 552.102(a) of the Government Code.<sup>1</sup> However, we find no portion of the remaining

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<sup>1</sup>As our ruling is dispositive, we do not address the other argument of the district to withhold this information.

information is subject to section 552.102(a) of the Government Code, and the district may not withhold any of the remaining responsive information on that basis.

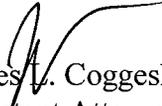
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly 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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find the information revealing the gender of the employees at issue does not satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. See Gov’t Code § 552.022(a)(2) (providing for required public disclosure of name, sex, ethnicity, salary, title, and dates of employment of each employee of governmental body, unless information is confidential under the Act or other law). Accordingly, this information is not confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

To conclude, the district must withhold the submitted dates of birth under section 552.102(a) 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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sdk

Ref: ID# 611666

Enc. Submitted documents

c: Requestor  
(w/o enclosures)