



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1995

Mr. Jeffery C. Lewis
Atchley, Russell, Waldrop & Hlavinka, L.L.P.
P.O. Box 5517
Texarkana, AR-TX 75505-5517

OR95-298

Dear Mr. Lewis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government. We assigned your request ID# 30794.

The Texarkana Independent School District (the "district") received a request for a copy of the superintendent's contract. You ask "[i]s it necessary under the Open Records Act to produce a copy of the Superintendent's contract when the same information can be produced from other sources?" In Open Records Decision No. 606 (1992), this office determined that "the act requires a governmental body to release a copy of an actual requested record, with any confidential or nondisclosable information excised." Open Records Decision No. 606 (1992) at 3. In this instance, the requestor asked for the contract; and you must release to the requestor a copy of the contract.

You also claim that portions of the contract are excepted from required public disclosure by section 552.101 or section 552.102. We assume that those portions of the contract that you have highlighted¹ are the portions you believe should be withheld. Section 552.102 excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information only if its release would cause an invasion of privacy under the test articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See *Hubert v. Harte-Hanks Tex.*

¹The portions you have highlighted are parts I-D (retirement provision), III-B (part of mandatory annual physical examination provision), and X (health insurance premiums).

Newspapers, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. See *Industrial Found.*, 540 S.W.2d at 685.

We first address the first item you highlighted, a payment to the superintendent's retirement account. As you note in your letter, section 552.022(2) expressly declares that salaries of public employees are public information, and 552.022(3) declares that information in a "contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law" is likewise public information. In Open Records Decision No. 545 (1990), this office examined the effect of common-law privacy on financial transactions between individuals and governmental bodies. That opinion determined that "all financial information relating to an individual--including sources of income, salary . . .--ordinarily satisfies the first requirement of common-law privacy" as explained by the *Industrial Foundation* case, but that personal investment decisions are of no legitimate concern to the public. Open Records Decision No. 545 (1990) at 3. In this instance, the payment to the retirement account is part of the compensation of the superintendent, paid entirely by the district and must be disclosed. This office informed the superintendent of the district in Open Records Letter No. 94-842 (1994) that "the common-law right to privacy does not protect from disclosure the salary of a public employee." The same is true for other employment benefits paid entirely by a governmental body.

We also conclude that both of the other two items you have highlighted must be released. Neither item contains any information that might be considered "highly intimate or embarrassing" under the *Industrial Foundation* test. Therefore you must release the entire contract to the requestor immediately.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

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Enclosures: Submitted documents
Open Records Letter No. 94-842 (1994)

cc: Ms. Beth A. Swindler
2702 Magnolia
Texarkana, Texas 75503
(w/o enclosures)