



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 12, 1996

Mr. Jerry Majors
Superintendent of Schools
Comal Independent School District
1421 Highway 81 East
New Braunfels, Texas 78130

OR96-0936

Dear Mr. Majors:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32597.

The Comal Independent School District (the "district") received a request for, among other things, "[a]ll checks that have been written to any investment firm, insurance fund, investment pool, and retirement plan." You interpret this request to be for "records reflecting the names of employees who contribute to deferred compensation plans and the monthly amount of those contributions. Because you do not address the other items requested, we assume that you have provided the remaining information to the requestor.

The requestor, a former school board trustee, requested the records in his "official capacity." You contended in your request for a ruling to this office that the requestor was not entitled to the information at issue because it is excepted from disclosure under common-law privacy. You argued that the former board member's special right of access to information in his "official capacity" did not extend to information protected on the basis of privacy. You have informed this office, however, that the requestor is no longer a school board trustee. Therefore, he may no longer obtain information under a special right of access in his "official capacity." We address in this ruling only whether the requestor has access to the information as a member of the general public. Furthermore, because the question of whether the requestor can obtain the information in an "official capacity" is no longer at issue in this request, we do not address the remaining questions you have raised in connection with that issue.

Section 552.101 excepts from required public disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. You contend that disclosure of the requested information would violate a public employee's common-law right to privacy as the deferred compensation plans at issue "are optional coverages funded by the employee and not the district." Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Financial information concerning a public employee is in some cases protected by a common-law right of privacy. See Open Records Decision No. 600 (1992). Information is protected from disclosure if it relates to employees' personal financial decisions to allocate portions of their compensation to optional benefits which involve no state funding. *Id.* Optional benefits may include participation in TexFlex (an employee benefit plan that allows an employee to choose between cash compensation and one or more tax-exempt fringe benefits); participation in deferred compensation plans--including purchase of saving bonds; and purchase of optional life, accident, dependent life or disability insurance. *Id.* We agree that information reflecting the names of employees who contribute to deferred compensation plans and the monthly amount of those contributions is excepted from disclosure on the basis of common-law privacy. You must therefore withhold this information under section 552.101 of the Government Code.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 32597

Enclosures: Submitted documents

cc: Mr. Thomas L. Bruce
2365 Waterfront Park Drive
Canyon Lake, Texas 78133
(w/o enclosures)