



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 22, 1996

Mr. Jose R. Guerrero  
Montalvo & Ramirez  
900 North Main  
McAllen, Texas 78501

OR96-1214

Dear Mr. Guerrero:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100114.

The La Joya Independent School District (the "district") received a request for

1. Copies of the combination forms for all the precincts for the May 4, 1996 School Board Election.
2. Copies of the official school board minutes for the months of December, 1995, and January through March, 1996.
3. Copies of all the candidate's applications and resumes for the position of Food Service Director including Mr. Ruben H. Pena.
4. Criteria/job description for a Food Service Director.

You ask this office for a decision concerning the request for applications. You contend that some of the questions on the application are confidential by law and are excepted from required public disclosure by sections 552.101 and 552.102 of the Government Code. You have submitted a representative sample of the requested information you seek to withhold. Since you ask only about the applications, we assume that you have released the other requested information to the requestor.

We note initially that some of the requested material includes the home address, phone number, social security number and family information of a current or former district employee. It is possible that this information may be confidential under section 552.117 of the Government Code, and therefore, this specific information, depending on

the specific circumstances, may not be released. Section 552.117 of the Government Code excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold the home telephone number or social security number of a current or former employee or official who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

Further, social security numbers may be confidential under federal law in conjunction with section 552.101 of the Government Code. A social security number or "related record" may be confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that any of the social security numbers in the applications are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Open Records Act on the basis of that federal provision. We caution, however, that section 552.353 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you assert that those portions of the application which ask if the applicant has ever been arrested for a crime or violation other than a traffic violation and if the applicant has ever been convicted of a misdemeanor or felony is protected by privacy under sections 552.101 or 552.102 of the Government Code. Section 552.102 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, we will address whether section 552.101 applies to the highlighted information concerning the applicant's criminal history.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 also encompasses common-law and constitutional privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the doctrine of common-law privacy, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

The constitutional right to privacy protects two interests. Open Records Decision No. 600 (1992) at 4 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the "zones of privacy" recognized by the United States Supreme Court. Open Records Decision No. 600 (1992) at 4. The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.*

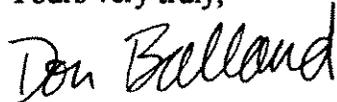
The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual's privacy interests against the public's need to know information of public concern. *See* Open Records Decision No. 455 (1987) at 5-7 (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." *See* Open Records Decision No. 455 (1987) at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

We do not believe that the answers provided by the applicants regarding the existence of any arrests or convictions is highly intimate or embarrassing. Moreover, the public has a legitimate interest in this information. *Cf.* Open Records Decision No. 455 (1987) at 9 (public has an interest in applicant's past employment record and suitability for position in question). Accordingly, the district may not withhold such information based on section 552.101 of the Government Code in conjunction with common-law or constitutional privacy. *Compare United States Dept. of Justice v. Reporters Comm. For Freedom of the Press*, 489 U.S. 749 (1989) (criminal history of private citizen protected by privacy) with *Plante v. Gonzalez*, 575 F.2d 1119, 1135 (5th Cir.), *cert. denied*, 439 U.S. 1129 (1979) (privacy rights of public employees not as broad as those of a private citizen).

Additionally, we note that while criminal history information obtained from Department of Public Safety is confidential pursuant to statute, Gov't Code §§ 411.083 - .084, the information at issue here was provided by the individual applicants. Therefore, this information is not governed by these statutory confidentiality provisions.

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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref.: ID# 100114

Enclosures: Submitted documents

cc: Ms. Ginger Villarreal  
P.O. Box 523  
Sullivan City, Texas 78595  
(w/o enclosures)