



October 10, 2000

Ms. Laura E. Enriquez-Guerra
Records Management Specialist
Ysleta Independent School District
9600 Sims Drive
El Paso, Texas 79925-7225

OR2000-3888

Dear Ms. Enriquez-Guerra:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 140773.

The Ysleta Independent School District (“YISD”) received a request for information pertaining to: (1) the employment of bus drivers, (2) the free breakfast and lunch program, (3) schools not recognized by the Texas Education Agency for the last year, and (4) all teacher and administrator organizations, including a list of members and dues charged. You have submitted a representative sample of a list of employees that indicates their respective professional organization and the amount of dues deducted from their salary for membership therein. You claim that this information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. Because you have requested a decision concerning only this information, we assume that you have released the remaining responsive information. *See* Gov’t Code § 552.301(a) (providing that governmental body must ask for a decision from the attorney general in order to withhold information). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ -

We first note that the requestor appears to be a member of the district’s Board of Trustees. Because you seek to withhold the requested information under the Public Information Act (the “act”), we assume that you have determined that the requestor does not seek the records in his official capacity but rather as a member of the general public. *See* Attorney General Opinion JM-119 (1983) (a member of a governmental body who is acting in his or her official

¹In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

capacity is not a member of the public for purposes of access to information in the governmental body's possession). This ruling addresses the availability of the requested records to members of the general public under the act; it does not address, and should not be construed in any way to limit, the requestor's right of access to records in his official capacity. Whether the requestor is seeking the records at issue in his official capacity is a fact question that cannot be resolved by this office. *See* Open Records Decision Nos. 554 at 4 (1990), 552 at 4 (1990).

Next, we turn to your argument that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. Personal financial information generally is excepted from public disclosure under common law privacy, except to the extent the information reflects a transaction between the employee and the governmental body. Open Records Decision Nos. 600 at 9-12 (1992) (information about public employee's participation in a group insurance program, retirement benefits beneficiaries, tax exempt reimbursement accounts, and direct deposit), 545 (1990) (information about a public employee's participation in a deferred compensation plan). We believe that an employee's decision to pay union dues through payroll deduction is personal financial information that is confidential under the common law right to privacy. Therefore, we agree that the submitted document is excepted from public disclosure under sections 552.101 and 552.102 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

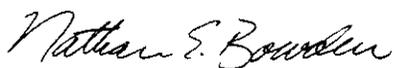
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App. -Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 140773

Encl: Submitted documents

cc: Mr. Fred Sanchez, Jr.
9600 Sims Drive
El Paso, Texas 79925-7225
(w/o enclosures)