



January 11, 2002

Mr. Larry A. Baskind  
Baskind, Samaniego & Hosford  
300 East Main, Suite 908  
El Paso, Texas 79901-1379

OR2002-0195

Dear Mr. Baskind:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157264.

The Presidio Independent School District (the "district"), which you represent, received a request for information regarding a district employee's health insurance coverage. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). "Education records" are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

Section 552.114 of the Government Code requires the district to withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114 as the equivalent of "education record" information that is subject to FERPA. See Open Records Decision No. 634 at 5 (1995). The information you have submitted relates to a district employee's insurance coverage. Such information does not constitute a "student record" or an "education record." Therefore, the submitted information may not be withheld under section 552.114 or 552.026.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the common law right of privacy. The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person and the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977).

This office has determined that some personal financial information is highly intimate or embarrassing and thus meets the first part of the *Industrial Foundation* test. Open Records Decision Nos. 600 (1992) (Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989) (credit reports, financial statements, and other personal financial information), 373 (1983) (assets and income source information). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Thus, information about the essential features of an employee's participation in a group insurance program funded in part by the state involves him in a transaction with the state and, therefore, is not excepted from disclosure by a right of privacy. On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the city. Open Records Decision No. 600 (1992). We believe that some of the submitted information constitutes personal financial information. Further, we believe there is no legitimate public interest in this information. Accordingly, we have marked the information in the submitted documents that must be withheld under section 552.101 in conjunction with common law privacy.

We note that some of the submitted information may be subject to section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See

Open Records Decision No. 530 at 5 (1989). The district must withhold this type of information pursuant to section 552.117 only to the extent that the respective employee elected to keep this information confidential prior to the district's receipt of the current records request.

If an employee did not timely elect to withhold his social security number as prescribed by section 552.024, the social security number may nevertheless be confidential under federal law. A social security number may be withheld in some circumstances 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 responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the 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.

To summarize, (1) the district must withhold the information we have marked under section 552.101 and common law privacy; (2) the district must withhold the home addresses, telephone numbers, social security numbers, and family member information for each district employee who elected to keep such information confidential prior to the district's receipt of the current request; (3) prior to releasing any social security number, you should ensure that it was not obtained or is not maintained by the district pursuant to any provision of law enacted on or after October 1, 1990; and (4) the remaining information must be released.

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 Department of Public 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 Hadassah Schloss at the Texas Building and Procurement 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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 157264

Enc: Submitted documents

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(w/o enclosures)