



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 11, 2003

Mr. Thomas E. Meyers
Brackett & Ellis
100 Main Street
Fort Worth, Texas 76102-3090

OR2003-2474

Dear Mr. Meyers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179324.

The Keller Independent School District, (the "district"), which you represent, received a request for five categories of information. You state that "[n]o objection is raised to four of the five categories, and all existing information responsive to those requests has been supplied to the requesting party." You claim that information responsive to the remaining category of the request, which you submitted, is excepted from disclosure under sections 552.101, 552.102, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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 v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. We will therefore consider your claims regarding section 552.101 and

¹The remaining category of the request seeks "the previous three paychecks as of the date of this letter, January 27, 2003," and the first paycheck issued in October, June, April, and January of 2002, and October of 2001.

section 552.102 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 Foundation*. 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. 540 S.W.2d at 685.

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.) Where a transaction is funded in part by the state, however, 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. After carefully reviewing the information you have highlighted under section 552.101 in conjunction with common-law privacy, we find that portions of this information are private. Thus, you must withhold the personal financial information we have marked under section 552.101 in conjunction with common-law privacy. The remainder of the information you have highlighted, however, is not protected by common-law privacy, and may not be withheld on this basis.

You next argue that some of the submitted information is excepted from disclosure under section 552.101 in conjunction with title 26 of section 6103(a) of the United States Code. Section 552.101 also covers information protected by statute. Section 6103(a) makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. See 26 U.S.C. § 6103(b)(2). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. See *Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), dismissed in part, aff'd in part, vacated in part, and remanded, 993 F.2d 1111 (4th Cir. 1993). After carefully considering the information at issue, we find that this information was not gathered by the Internal Revenue Service in accordance with title 26 of section 6103(a) of the United States Code. Accordingly, you may not withhold any of the submitted information on this basis.

You next indicate that some of the submitted information is protected from disclosure under section 552.101 in conjunction with section 825.507 of the Government Code. Section 825.507 of the Government Code provides, in relevant part, that "[i]nformation contained in records that are in the custody of *the retirement system* concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is confidential under section 552.101, and

may not be disclosed in a form identifiable with a specific individual. (Emphasis added.) Since the information at issue is in the custody of the district, and not the retirement system, section 825.507 is inapplicable. Thus, the district may not withhold the portions of the submitted information pertaining to the Texas Teacher Retirement System pursuant to section 552.101 in conjunction with sections 825.507 of the Government Code.

Finally, you argue that the named individual's bank name and bank account number are confidential under section 552.136. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code §552.136. We agree that some of the submitted information must be withheld under section 552.136. We have marked the information to which section 552.136 is applicable. However, we find that this section does not apply to the name of the individual's bank. Therefore, you may not withhold this information under section 552.136.

In summary, the district must withhold the personal financial information we have marked under section 552.101 in conjunction with common-law privacy. We have marked the information the district must withhold under section 552.136 of the Government Code. The remaining information must be released to the requestor.

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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 179324

Enc: Submitted documents

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(w/o enclosures)