



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

June 17, 2003

Mr. Joe A. De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2003-4173

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182900.

The Hays Consolidated Independent School District (the "district"), which you represent, received two written requests for, among other things, records pertaining to the retirement and subsequent rehiring of a named district employee.¹ You contend that the documents you submitted to this office as being responsive to the requests are excepted from required disclosure pursuant to sections 552.101 and 552.102 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." Gov't Code § 552.101 (emphasis added). You contend that the submitted documents are 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." Gov't Code § 825.507 (emphasis added). However, because the records you seek to withhold are in the custody of the district, and not the retirement system, section 825.507 is inapplicable in this instance. Thus, the district may not withhold any of the submitted information pursuant to section 552.101 in conjunction with section 825.507 of the Government Code.

¹You indicate that some of the requested records have been released to the requestors.

Section 552.102(a) of the Government Code protects “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy” Section 552.102(a) is designed to protect public employees’ personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101 of the Government Code. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.—Austin 1983, writ ref’d n.r.e.). To be protected under common-law privacy, the information must contain highly intimate or embarrassing facts about a person’s *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

After reviewing the submitted records, this office could discern no information that falls within the protection of common-law privacy. The information at issue pertains solely to the employment of a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the type of information at issue here. Accordingly, we conclude that none of the submitted information is protected from public disclosure under section 552.102 of the Government Code. Consequently, the submitted records must be released to the requestors in their entirety, with the following possible exception.

We note that the submitted records contain district employees’ social security numbers. Section 552.117(1) requires that the district withhold, *inter alia*, an employee’s social security number, but only if the employee elected to keep this information confidential in accordance with section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, in order to withhold section 552.117(1) information from the public, a proper election must be made prior to a governmental body’s receipt of the request for information. Consequently, the district must withhold the employees’ social security numbers pursuant to section 552.117(1) only if the employee elected to keep this information confidential in accordance with section 552.024 prior to the district’s receipt of the current records requests.

We additionally note that if the employees’ social security numbers are not excepted from disclosure under section 552.117, they might nevertheless be excepted from disclosure 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). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the district pursuant to any provision of law enacted on or after

October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the district should ensure that they were not obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

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).

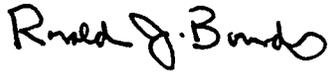
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/RWP/sdk

Ref: ID# 182900

Enc: Submitted documents

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