



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2003

Ms. Ylise Y. Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703

OR2003-6249

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 187198.

The Austin Independent School District (the "district") received a request for information concerning a third party administrator, National Plan Administrators, for a specified period of time. You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that the district only submitted to us for review a copy of a certain district official's "Salary Reduction Agreement 457(b) plan." We, therefore, presume that the district has already provided the requestor with all other responsive information to the extent that it exists. If not, the district must do so at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy.¹ We note that information is protected from disclosure under the common-law right to privacy when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure under the common-law right to privacy.

to a reasonable person, and (2) it is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is protected from disclosure under the common-law right of privacy. *See* Open Records Decision Nos. 600 (1992) (finding federal tax Form W-4 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 related to personal financial decisions), 545 (1990) (deferred compensation plan). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. *See* Open Records Decision No. 600 at 10 (1992). Based on our review of your representations and the submitted information, we agree that the information is confidential under the common-law right to privacy and, thus, must be withheld in its entirety pursuant to section 552.101 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

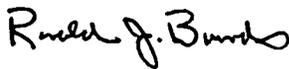
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 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/lmt

Ref: ID# 187198

Enc. Submitted documents

c: Ms. Michelle M. Martinez
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(w/o enclosures)