



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 21, 2004

Ms. Ellen B. Huchital
McGinnis, Lochridge & Kilgore
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010

OR2004-8056

Dear Ms. Huchital:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209672.

The Eanes Independent School District (the "district"), which you represent, received a request for all documentation reflecting 1) any teaching certification held by a named educator; and 2) the employment of the named educator as a teacher or substitute teacher. You state that the district has provided the requestor with some of the requested information, but claim that portions of the submitted information are excepted from disclosure pursuant to sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) 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). Section 552.102(a) is generally applicable to information relating to a public official or employee. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). 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 excepted from disclosure under section 552.102(a) is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected from disclosure by the common law right to privacy as incorporated by section 552.101 of the Government Code. See also *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976).

Accordingly, we address the district's section 552.102 claim in conjunction with its common law privacy claim under section 552.101 of the Government Code.¹

Information is protected from disclosure by the common law right to privacy when (1) it is highly intimate and embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. This office has since concluded that other types of information also are protected from disclosure by the common law right to privacy. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to a drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

Based on your arguments and our review of the submitted information, we find that portions of this information are protected from disclosure by the common law right to privacy. Accordingly, we conclude that the district must withhold documents B8 and B18 pursuant to sections 552.101 and 552.102 of the Government Code in conjunction with the common law right to privacy.

However, you also contend that the telephone numbers and addresses of references provided by the employee in question and found in documents B3, B5, B12, B15 and B16 are also protected by privacy. Telephone numbers, addresses, and personal information are ordinarily not private information subject to section 552.101. *See* Open Records Decision Nos. 554 (1990), 448 (1986). Consequently, we determine that the telephone numbers and addresses that you have marked in documents B3, B5, B12, B15 and B16 are not excepted from disclosure under section 552.101 in conjunction with common-law privacy because they are not highly intimate and embarrassing.

You also claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal statutes. Section 552.101 also encompasses information that is protected from disclosure by other statutes. We note that section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime

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 by the common law right to privacy.

and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). In this instance, the release of documents B6 and B7 would be “for purposes other than for enforcement” of the referenced federal statute. Accordingly, we conclude that the district may only release documents B6 and B7 in compliance with the federal laws and regulations governing the employment verification system.

You also claim that the submitted tax forms are excepted from disclosure pursuant to section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); *see also* Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). 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). Section 6103(b) defines the term “return information” as “a taxpayer's identity, the nature, source, or amount of income, payments, tax withheld, deficiencies, overassessments or tax payments... or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary [of the Internal Revenue Service] with respect to a return... or the determination of the existence, or possible existence, of liability... for any tax,... penalty,..., or offense[.]” *See* 26 U.S.C. § 6103(b)(2)(A). Based on your arguments and our review of the remaining submitted information, we conclude that the district must withhold documents B13, B14 and B17 in their entireties pursuant to section 552.101 in conjunction with section 6103 of title 26 of the United States Code.

We note that some of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and 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 under section 552.024.² 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 may only withhold information under section 552.117 on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent that the employee in question made a timely election under section 552.024, the district must withhold the information we have marked under section 552.117.

Even if the employee did not timely elect to keep this information confidential, the employee's social security number may also be excepted from disclosure under section

² The Office of the Attorney General will raise mandatory exceptions like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, 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.

Lastly, you claim that some of the remaining information is subject to section 552.102(b) of the Government Code, which excepts from public disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." Gov't Code § 552.102(b). This section further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the submitted transcript under section 552.102(b).

In summary, the district must withhold documents B8 and B18 pursuant to sections 552.101 and 552.102 in conjunction with the common law right to privacy. The district may only release documents B6 and B7 in compliance with the federal laws and regulations governing the employment verification system. The district must withhold documents B13, B14 and B17 in their entireties pursuant to section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. The district must withhold the information we have marked under section 552.117 if the employee to whom the information pertains made a timely election under section 552.024. Even if the employee did not timely elect to keep this information confidential, social security numbers may be excepted under section 552.101 in conjunction with federal law. Except for the information that reveals the degree obtained and the courses taken, the district must withhold the submitted transcript under section 552.102(b). The district must release the remaining submitted information 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).

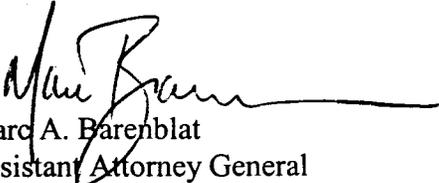
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 209672

Enc. Submitted documents

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