



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

September 30, 2005

Ms. Sunny Lin Wei
Henslee, Fowler, Hepworth & Schwartz, L.L.P.
3200 S. W. Freeway, Suite 2300
Houston, Texas 77027

OR2005-08875

Dear Ms. Wei:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 236398.

The Bryan Independent School District (the "district"), which you represent, received a request for information pertaining to applicants for math teacher positions and newly hired math teachers, including information about interviews, resumes, applications, and cover letters. You state that the district does not maintain some requested information. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You claim that portions of the remaining requested information, a representative sample of which you have submitted for our review, are excepted from disclosure under sections 552.101, 552.102, 552.117, 552.137, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

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 refused n.r.e.), the court ruled that the test to be applied to information

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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 of the Government Code.² We will therefore consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

In *Industrial Foundation*, the Texas Supreme Court held that information is protected by common-law privacy if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Id.* at 685. 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. 540 S.W.2d at 683. Upon review, however, we conclude that none of the submitted information is protected under common-law privacy, and the district may therefore not withhold any of it under section 552.101 or section 552.102.

Next, section 552.117(a)(1) of the Government Code 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. An individual's work telephone number is excepted from disclosure on this basis. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us that some of the applicants who were subsequently hired by the district have made a timely election under section 552.024. As such, the district must withhold the information we have marked pursuant to section 552.117(a)(1) for the district employee who made a timely election to keep such information confidential prior to the date on which the district received this request for information.

Section 552.147 of the Government Code³ provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, to the extent section 552.117(a)(1) does not apply to such information, the district must withhold the social security numbers pursuant to section 552.147.⁴

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy.

³Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

Next, we address your claim under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. Gov't Code § 552.130. Accordingly, the district must withhold the Texas driver's license we have marked pursuant to section 552.130.

Lastly, section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. As such, the district may not withhold the government e-mail addresses in the submitted documents. The remaining e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). As such, this e-mail address, which we have marked, must be withheld under section 552.137 unless its owner has affirmatively consented to its release. *See* Gov't Code § 552.137(b).

In summary, the district must: (1) withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code for district employees who made a timely election to keep such information confidential prior to the date on which the district received this request for information; (2) to the extent section 552.117(a)(1) does not apply, withhold the social security numbers under section 552.147 of the Government Code; (3) withhold the Texas driver's license we have marked under section 552.130 of the Government Code; (4) withhold the e-mail address we have marked under section 552.137 of the Government Code; and (5) release the remaining 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 ten 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 236398

Enc. Submitted documents

c: Carl Strain
700 S. Dexter Drive
College Station, TX 77840
(w/o enclosures)