



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 24, 2007

Ms. Susan K. Bohn
General Counsel
Lake Travis Independent School District
3322 Ranch Road 620 South
Austin, Texas 78738

OR2007-12398

Dear Ms. Bohn:

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# 289870.

The Lake Travis Independent School District (the "district") received three requests for three district employees' personnel files and financing and accounting files relating to those three district employees. You state that you will provide the requestor an opportunity to review some of the documents. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code 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 information made confidential by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States

¹The submitted information contains social security numbers, some of which the district has redacted. 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.

Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). 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). The submitted information contains W-4 forms. Accordingly, the district must withhold the submitted W-4 forms pursuant to federal law.

The submitted information also includes I-9 forms, which are governed by section 1324a of title 8 of the United States Code. This section provides that this form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5). Release of these documents under the Act would be "for purposes other than for enforcement" of the referenced federal statute. Accordingly, we conclude that the submitted I-9 forms are confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Section 552.101 also encompasses section 21.355 of the Education Code, which provides, "a document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also determined that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of the evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is serving as an administrator at the time of the evaluation. *Id.* You inform us that the individual at issue is an administrator who holds a Texas Educator Certificate under chapter 21 of the Texas Education Code. Provided that the individual at issue was administering at the time of the evaluations, we agree that the documents at Tab 4 fall within the scope of section 21.355 and must be withheld on that basis.

Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information that (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. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common law privacy, see Open Records

Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps).

In addition, this office has 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) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). The district asserts that some of the submitted information is made confidential by common law privacy. It also explains that the district only contributes financially to a group medical insurance plan for its employees and that employees may elect to enroll in other types of insurance and annuities. Upon review, we agree that some of the submitted information is private. The district must withhold the information we have marked under section 552.101 in conjunction with common law privacy. However, no part of the remaining information for which the district asserts common law privacy may be withheld on this basis.

You claim that the marked portions of the employees' submitted transcripts are excepted under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, courses taken, and degree obtained, which you must release, we find that the submitted transcripts must be withheld pursuant to section 552.102(b).

Section 552.117(a)(1) 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 of the Government Code. Gov't Code §§ 552.024, .117(a)(1). *See also* Open Records Decision No. 670 (2001) (extending section 552.117(a)(1) exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). 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 each of the individuals at issue indicated to the district before the request was made that he or she would like to protect their home contact information from public disclosure. Accordingly, we determine that the district must withhold the home contact information it

has marked, as well as the additional information we have marked.² However, we note that the submitted information contains an election form that reflects that one of the individuals at issue desired for her home contact information to be subject to public disclosure. If the individual at issue did not submit another form prior to the time this request was made, electing to withhold her home contact information, this individual's home contact information may not be withheld pursuant to section 552.117(a)(1). We further note that the submitted information contains family member information. If the individuals at issue timely elected to withhold this information, the district must withhold the family member information we have marked pursuant to section 552.117.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. The district must withhold the Texas motor vehicle information it has marked pursuant to section 552.130.

Section 552.136 of the Government Code states that "[n]otwithstanding 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." *Id.* § 552.136. The district must withhold the credit card, bank account, and routing numbers that we have marked pursuant to section 552.136.

Section 552.137 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).³ *See id.* § 552.137(a)-(c). The e-mail addresses contained in the submitted information, which we have marked, are not the type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the district must withhold them in accordance with section 552.137 of the Government Code.

In summary, the district must withhold the submitted W-4 and I-9 forms under section 552.101 of the Government Code in conjunction with federal law. As long as the individual at issue was administrating at the time of the evaluations, the district must withhold the documents submitted at Tab 4 under section 552.101 in conjunction with

²We further note that personal e-mail addresses are not excepted from disclosure by section 552.117(a)(1).

³The Office of the Attorney General will raise a mandatory exception like section 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 21.355 of the Education Code. The district must withhold the information we have marked under section 552.101 in conjunction with common law privacy. With the exception of the employees' names, courses taken, and degrees obtained, the submitted transcripts must be withheld under section 552.102(b). The district must withhold the personal information of the individuals at issue under section 552.117(a)(1), provided that each made a timely election to withhold that particular category of personal information. The district must withhold the Texas motor vehicle information it has marked under section 552.130. The district must withhold the information we have marked under section 552.136. The district must withhold the e-mail addresses we have marked under section 552.137. The remaining information must be released.

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, 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 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Kara A. Batey". The signature is written in a cursive style with a large, looping "y" at the end.

Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 289870

Enc. Submitted documents

c: Ms. Melissa Lovelace
103 Galaxy
Austin, Texas 78734
(w/o enclosures)