



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2007

Ms. Erica Escobar
Bracewell & Giuliani LLP
800 One Alamo Center
106 South St. Mary's Street
San Antonio, Texas 78205-3603

OR2007-13889

Dear Ms. Escobar:

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# 292672.

The Lake Travis Independent School District (the "district"), which you represent, received five requests from the same requestor for personnel and other information relating to five named employees of the district. You state that some of the requested information is being released. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that information has been redacted from the submitted documents. As you point out, the requestor has agreed to the redaction of social security numbers, bank account numbers, and grades contained in educational transcripts. We therefore agree that those types of information are not responsive to these requests and were appropriately redacted. We have marked other non-responsive information that the district must also redact. You do not inform us, however, that the requestor agreed to the remaining redactions. Therefore, as we are able to discern the nature of that information, we will address its public availability. In the future, the district should refrain from the unauthorized redaction of responsive information that it submits to this office for the purpose of requesting a ruling under the Act. *See* Gov't Code §§ 552.301(e)(1)(D), .302; *but see id.* § 552.147(b)

(authorizing governmental body to redact living person's social security number from public release without necessity of requesting decision under Act).

We also note, and you acknowledge, that the district's request for this decision was not timely under section 552.301 of the Government Code. Section 552.301(b) requires a governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Thus, because the district did not comply with section 552.301(b) in requesting this decision, the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, the district's claims under sections 552.101, 552.102, 552.117, 552.130, and 552.136 of the Government Code can provide compelling reasons for non-disclosure. Accordingly, we will address your arguments.

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 exception encompasses information that other statutes make confidential. 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 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 the submitted Form I-9's would be "for purposes other than for enforcement" of the applicable federal law. A Form I-9 may only be released for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the district must withhold the Form I-9's that we have marked under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

Section 6103 of title 26 of the United States Code makes federal tax return information confidential. The term "return information" includes "the nature, source, or amount of income" of a taxpayer. 26 U.S.C. § 6103(b)(2); *see also* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). The district must withhold the W-4 forms that we have marked under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex.*

Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. See *id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. See generally Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We have marked medical information that is intimate or embarrassing and of no legitimate public interest and must be withheld from disclosure under section 552.101 in conjunction with common-law privacy.

Common-law privacy also encompasses certain types of personal financial information. Financial information that relates only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. See ORD 600 at 9-12 (identifying public and private portions of certain state personnel records); see also Open Records Decision Nos. 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), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Thus, a public employee's allocation of part of the employee's salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. See, e.g., ORD 600 at 9-12 (participation in TexFlex), 545 at 3-5 (deferred compensation plan). Likewise, the details of an employee's enrollment in a group insurance program, the designation of the beneficiary of an employee's retirement benefits, and an employee's authorization of direct deposit of his or her salary are protected by common-law privacy. See ORD 600 at 9-12.

You inform us that the district contributes to a group medical insurance plan for its employees, but the employees themselves bear the financial responsibility for the other types of benefits to which the submitted information pertains. Based on your representations, we have marked personal financial information that must also be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.102(b) of the Government Code excepts from 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 exception also provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.* We therefore agree that except for the information that

reveals the employee's name, the degree obtained, and the courses taken, the district must withhold the transcripts that we have marked under section 552.102(b). *See* Open Records Decision No. 526 (1989). We note, however, that the district also seeks to withhold grade-point averages contained in documents other than transcripts under this exception. Section 552.102(b) is not applicable to that information, which we have marked, and it must be released. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential.

You have marked the information that the district seeks to withhold under section 552.117(a)(1). You state that the employees concerned requested confidentiality under section 552.024 before the district received these requests for information. We note that the submitted documents contain section 552.024 election forms for three of the employees concerned. Based on your representation and the submitted election forms, we agree that the district must withhold most of the information that you have marked under section 552.117(a)(1). We have marked other information that must also be withheld under section 552.117(a)(1) to the extent that the marked information pertains to an employee who timely requested confidentiality for the marked information under section 552.024. We note, however, that section 552.117(a)(1) is not applicable to some of the information that the district seeks to withhold under this exception, including business telephone numbers, e-mail addresses, and information relating to emergency contacts who are not identified as family members of the employees concerned. With regard to the employees whose election forms are contained in the submitted documents, we also note that the district may only withhold the information that those employees specifically elected to keep confidential. We have marked the information that is not excepted from disclosure under section 552.117(a)(1) and must be released.

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 or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1)-(2). We have marked Texas driver's license and motor vehicle information that the district must withhold

under section 552.130. We note that this exception is not applicable to out-of-state driver's license and motor vehicle information.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of [the Act], 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(b); *see id.* § 552.136(a) (defining “access device”). We note that much of the information that you have marked to be withheld under section 552.136 does not fall within the scope of this exception. We have marked a representative sample of the types of credit card and other account numbers in Exhibit 7 that the district must withhold under section 552.136. We also have marked an account number in Exhibit 5 that must be withheld under this exception.

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter,” unless the owner of the e-mail address has affirmatively consented to its public disclosure.¹ *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked personal e-mail addresses that the district must withhold under section 552.137 unless the owner of the e-mail address has affirmatively consented to its disclosure.

Lastly, we note that some of the remaining information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the district must withhold the marked Form I-9's under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (2) the district must withhold the marked W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code; (3) the district must withhold the marked medical and personal financial information under section 552.101 in conjunction with common-law privacy; (4) except for the information that reveals the employee's name,

¹Unlike other exceptions to disclosure under the Act, this office will raise section 552.137 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

the degree obtained, and the courses taken, the district must withhold the marked transcripts under section 552.102(b) of the Government Code; (5) except for the marked information that is not encompassed by section 552.117 of the Government Code and must be released, the district must withhold the information that you have marked under section 552.117(a)(1), as well as the additional information that we have marked to the extent that the information pertains to an employee who timely requested confidentiality for the information under section 552.024 of the Government Code; (6) the district must withhold the marked Texas driver's license and motor vehicle information under section 552.130 of the Government Code; (7) the district must withhold the marked types of credit card and other account numbers in Exhibit 7 and the marked account number in Exhibit 5 under section 552.136 of the Government Code; and (8) the district must withhold the marked e-mail addresses under section 552.137 of the Government Code unless the owner of the e-mail address has affirmatively consented to its public disclosure. The rest of the submitted information must be released. Information that is protected by copyright must be released in accordance with copyright law.

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).

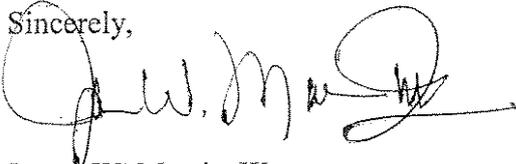
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 292672

Enc: Submitted documents

c: Ms. Melissa Lovelace
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(w/o enclosures)