



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 28, 2007

Mr. Erik T. Dahler  
Associate General Counsel  
District Office of Legal Affairs  
Alamo Community College District  
201 West Sheridan, Building C-8  
San Antonio, Texas 78204-1429

OR2007-17077

Dear Mr. Dahler:

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# 303115.

The Alamo Community College District (the "district") received a request for "a list of employees with 403Bs." You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Prior decisions of this

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<sup>1</sup>We 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.

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 excepted from disclosure under the common law right of privacy. *See* Open Records Decision No. 545 (1990). Likewise, an employee's designation of a retirement beneficiary is excepted from disclosure under the common law right to privacy. *See* Open Records Decision No. 600 (1992). 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). You indicate that the 403(b) plan offered by the district is totally funded by the employees with no public funds contributed by the district. You also indicate that enrollment in the district's 403(b) plan is voluntary. Accordingly, we agree that the information at issue must be withheld under section 552.101 in conjunction with common-law privacy.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jh

Ref: ID# 303115

Enc. Submitted documents

c: Mr. Pete Connell  
c/o Erik T. Dahler  
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201 West Sheridan, Building C-8  
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(w/o enclosures)