



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 20, 2008

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

OR2008-02341

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# 302645.

The Lake Travis Independent School District (the "district") received a request for the personnel file of and information about a specified employee. 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. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we 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.¹

We note that a portion of the responsive information was the subject of another request for information submitted to the district on the same day as the instant request, in response to which this office has issued Open Records Letter No. 2008-02305 (2008). In Open Records Letter No. 2008-02305, we ruled upon the availability of evaluations of two district

¹Accordingly, any of this information within the submitted documents is not responsive to the present request and we do not address such information in this ruling. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed).

administrators. In this request, the requestor seeks the entire personnel file of one of these district administrators, including her evaluations. Thus, a portion of the information in the instant request is identical to the information ruled upon by this office. We have no indication that the law, facts, and circumstances on which the prior ruling was based have changed. Therefore, we conclude that the district must rely on Open Records Letter No. 2008-02305 as a previous determination and withhold or release the evaluations in Tab 3 in accordance with that ruling. See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent that the submitted information was not the subject of this prior ruling, we will address the district's arguments against disclosure.

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 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, we agree the district must withhold the Form I-9 in Tab 1 under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

Section 552.102(a) of the Government Code excepts from public 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 Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same test 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. We will therefore consider your claims regarding sections 552.101 and 552.102 together.

Common law privacy protects information 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 a legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common law privacy, both prongs of this test must be satisfied: *Id.* at 681-82. This office has found 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). We have marked medical information in Tab 2 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.

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 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 transcripts in Tab 4 under section 552.102(b) of the Government Code.

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). The district may only withhold information under section 552.117(a)(1) 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. You state and provide documentation that the employee in question timely elected under section 552.024 to keep her home address and telephone number confidential. We have marked the information that must be withheld under section 552.117(a)(1).

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 information you have marked in Tab 6, as well as the additional information we have marked in Tab 5, under section 552.130 of the Government Code.

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(b). The district must withhold the credit card numbers you have marked in Tab 7, except as we have marked for release, under section 552.136 of the Government Code. The district must also withhold the additional information we have marked in Tabs 5 and 7 under section 552.136.

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.² *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 the personal e-mail address in Tab 5 that the district must withhold under section 552.137 unless the owner of the e-mail address has affirmatively consented to its disclosure.

In summary: (1) the district must withhold or release the evaluations in Tab 3 according to our previous determination in Open Records Letter No. 2008-02305; (2) the district must withhold the Form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (3) the district must withhold the medical information we have marked in Tab 2 under section 552.101 of the Government Code in conjunction with common law privacy; (4) except for the information that reveals the employee's name, the degree obtained, and the courses taken, the district must withhold the transcripts in Tab 4 under section 552.102(b) of the Government Code; (5) the district must withhold the information that we have marked under section 552.117(a)(1) of the Government Code; (6) the district must withhold the information we have marked in Tab 5 and the information the district has marked in Tab 6 under section 552.130 of the Government Code; (7) except for the information we have marked for release, the district must withhold the credit card numbers the district has marked in Tab 7 and the information we have marked in Tabs 5 and 7 under section 552.136 of the Government Code; and (8) the district must withhold the e-mail address we have marked in Tab 5 under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its public disclosure. The remaining information must be released 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 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).

²The 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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 302645

Enc. Submitted documents

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