



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 29, 2008

Ms. Carolyn M. Hanahan  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugar Land, Texas 77479

OR2008-11936

Dear Ms. Hanahan:

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# 320912.

The Fort Bend Independent School District (the "district") received a request for information pertaining to a former employee. You state that some responsive information has been released to the requestor.<sup>1</sup> You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code.<sup>2</sup> 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." This

---

<sup>1</sup>You state that the district has redacted social security numbers pursuant to section 552.147 of the Government Code. *See* Gov't Code § 552.147(b) (governmental body may redact social security number without necessity of requesting decision from this office under the Act). Although you have marked the social security numbers under section 552.137 of the Government Code, we note that section 552.147 is the correct exception.

<sup>2</sup>Although the district asserts that the former employee's home address and telephone number are excepted from release under section 552.024(b) of the Government Code, we understand the district to assert section 552.117 of the Government Code instead. Section 552.024 is not an exception to disclosure under the Act, but instead permits an employee of a governmental body to choose whether to allow public access to certain information relating to the employee that is held by the employing governmental body.

section 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976).

The types 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. *Id.* at 683. In addition, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses is protected by 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). This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990).

Upon review, we agree that some of the information you seek to withhold is protected by common-law privacy; therefore, we have marked the information that the district must withhold under section 552.101 of the Government Code. We find, however, that the remaining information you seek to withhold under this exception is not intimate or embarrassing or there is a legitimate public interest in the information. Therefore, none of the remaining information is confidential under common-law privacy, and the district may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses information protected by other statutes, such as section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) of title 26 of the United States 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). Federal courts have construed the term "return information" expansively to include any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code. *See Mallas v. Kolak*, 721 F. Supp 748, 754 (M.D.N.C. 1989), *aff'd in part*, 993 F.2d 1111 (4th Cir. 1993). The district

must withhold the submitted W-4 forms pursuant to section 552.101 of the Government Code in conjunction with federal law.

Section 552.117(a)(1) of the Government Code excepts from public 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 an 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 an official or employee who did not timely request under section 552.024 that the information be kept confidential. You inform us that the employee at issue made a timely election for confidentiality of his home address and telephone number under section 552.024. We therefore conclude that the district must withhold the former employee's home address and telephone number under section 552.117(a)(1) of the Government Code. However, the former employee did not elect to keep confidential his family member information; therefore, the district may not withhold the family member information of the employee at issue under section 552.117.

You assert that some of the remaining information is excepted under section 552.130 of the Government Code, which provides that information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency is excepted from public release. Gov't Code § 552.130(a)(1), (2). We agree that the district must withhold the Texas motor vehicle record information you have marked under section 552.130. We have marked some additional information that must be withheld under section 552.130 of the Government Code.

Finally, we note that some of the remaining information is excepted under section 552.137 of the Government Code.<sup>3</sup> 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). *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. The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You do not

---

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

inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. Therefore, the district must withhold the e-mail address we have marked under section 552.137.

To conclude, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must also withhold (1) the W-4 forms pursuant to section 552.101 of the Government Code in conjunction with federal law; (2) the former employee's home addresses and telephone numbers under section 552.117 of the Government Code; (3) the information marked under section 552.130 of the Government Code, and (4) the information we have marked under section 552.137 of the Government Code. The district must 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 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). If the governmental body does not file suit over 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jb

Ref: ID# 320912

Enc. Submitted documents

c: Ms. Erica Jackson  
522 North Pine  
Arcola, Texas 77583  
(w/o enclosures)