

The ruling you have requested has been modified pursuant to a court order. The court judgment has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 30, 2009

Mr. S. Anthony Safi
Mounce, Green, Myers, Safi, Paxson & Galatzan
P.O. Box 1977
El Paso, Texas 79950-1977

OR2009-09014

Dear Mr. Safi:

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# 352129.

The El Paso Independent School District (the "district"), which you represent, received a request for a list of all district employees, their birth dates, and their titles. You state that you have provided some of the requested information. You claim that the requested birth dates are excepted from disclosure under sections 552.101, 552.102, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision[.]" Gov't Code § 552.101. Section 552.101 encompasses information protected by common-law privacy. Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly

¹We 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.

unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (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 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. Accordingly, we address the district’s section 552.101 and 552.102 privacy claims together.

Information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. See Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee’s qualifications and performance and the circumstances of public employee’s resignation or termination), 423 at 2 (1984) (explaining that because of greater legitimate public interest in disclosure of information regarding public employees, employee privacy under section 552.102 is confined to information that reveals “intimate details of a highly personal nature”); see also Gov’t Code § 552.022(a)(2) (name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of governmental body are public information). Although you assert that requested birth dates should be protected from disclosure, names and birth dates are not intimate or embarrassing. *Tex. Comptroller of Public Accounts v. Attorney Gen. of Tex.*, 244 S.W.3d 629 (Tex. App.—2008, pet. granted) (“We hold that date-of-birth information is not confidential[.]”); see Attorney General Opinion MW-283 (1980) (public employee’s date of birth not protected under privacy); Open Records Decision No. 455 at 7 (1987) (birth dates, names, and addresses are not protected by privacy). Upon review, we find that you have failed to explain how any portion of the requested information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. Thus, we conclude that the submitted information is not protected by common-law privacy, and no portion of the information may be withheld under section 552.101 or 552.102 of the Government Code on this basis.

You also assert that the requested birth dates are access device numbers subject to section 552.136 of the Government Code. Section 552.136 provides 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.” Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* Upon review, we find that the district has failed to demonstrate how employee birth dates constitute access device numbers subject to section 552.136. Therefore, the district may not withhold any of the information at issue pursuant to section 552.136 of the Government Code. As you raise no other exceptions to disclosure of this information, the requested birth dates must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Paige Savoie
Assistant Attorney General
Open Records Division

PS/eeg

Ref: ID# 352129

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

EL PASO INDEPENDENT SCHOOL DISTRICT,
Plaintiff,

v.

GREG ABBOTT, ATTORNEY GENERAL OF TEXAS,
Defendant.

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

126th JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

Filed in The District Court of Travis County, Texas

TJ NOV 30 2011

At 1:32 P.M. Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiff El Paso Independent School District (EPISD) and Defendant Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally compromised and settled.

This cause is an action under the Public Information Act (PIA), Tex. Gov't Code Ann. ch. 552 (West 2004 & Supp. 2009). The parties represent to the Court that, in compliance with PIA § 552.325(c), the requestor, Kristine Rivers, was sent reasonable notice of this setting and of the parties' agreement that EPISD must withhold the information at issue; that the requestor was also informed of their right to intervene in the suit to contest the withholding of this information; and that the requesters has not informed the parties of her intention to intervene. The requestor neither filed a motion to intervene nor appeared today.

After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically, the requested El Paso Independent School District employees' dates of birth, is excepted from disclosure pursuant to Tex. Gov't Code § 552.102.

2. EPISD ^{must w/ permission 11/10/11} withhold from the requester the information described in Paragraph 1 of this Judgment.

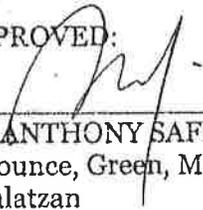
3. All costs of court are taxed against the parties incurring the same;

4. All relief not expressly granted is denied; and

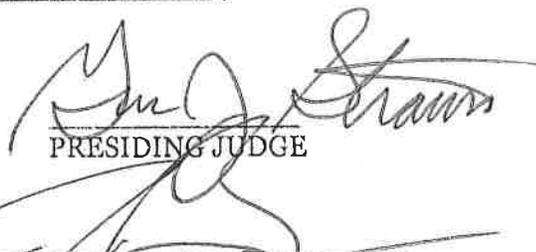
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

SIGNED this the 30 day of November, 2011.

APPROVED:


S. ANTHONY SAFI
Mounce, Green, Myers, Safi, Paxson &
Galatzan
P.O. Box 1977
El Paso, Texas 79950-1977
Telephone: (915) 532-2000
Facsimile: (915) 541-1548
State Bar. No. 17516800

ATTORNEY FOR PLAINTIFF


PRESIDING JUDGE

JOHN P. BEAUCHAMP
Assistant Attorney General
Open Records Litigation
Environmental Protection and
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4195
Facsimile: (512) 320-0167
State Bar No. 24051634

ATTORNEY FOR DEFENDANT