



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 12, 2010

Mr. Miguel A. Saldana  
Walsh, Anderson, Brown, Gallegos and Green, P.C.  
103 East Price Road, Suite A  
Brownsville, Texas 78521

OR2010-05086

Dear Mr. Saldana:

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# 375741 (Brownsville ISD PIR No. 5298).

The Brownsville Independent School District (the "district"), which you represent, received a request for a named former district employee's personnel file. You claim the submitted information is exempted from disclosure under sections 552.101 and 552.102 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(a) of the Government Code exempts from 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 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(a) 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 of

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<sup>1</sup>In your brief dated February 12, 2010, you state the requested information "is confidential by its own terms and pursuant the [sic] attorney client privilege." Based on this statement, we understand you to raise section 552.107 of the Government Code. However, because you have provided no arguments explaining how this exception is applicable to the submitted information, we assume you no longer assert section 552.107. See Gov't Code §§ 552.301, .302.

the Government Code.<sup>2</sup> For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82.

This office has found 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) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find some of the submitted information constitutes personal financial information. We also find this information is not of legitimate public concern. Thus, the district must withhold the information we have marked under section 552.102(a). The remaining information, however, either is not intimate or embarrassing or is of legitimate public interest. Therefore, no portion of the remaining information may be withheld under section 552.102(a).

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 office has interpreted "professional public school employee" to refer to employees of public schools who provide "public education" under title 2 of the Education Code. In this instance, the named former district employee, whose transcript is at issue, served as a computer programmer. The district has not explained that a computer programmer provides public education to qualify as a professional public school employee. Therefore, we determine section 552.102(b) does not

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<sup>2</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." Gov't Code § 552.101.

apply to the former district employee's transcript. Accordingly, the district may not withhold any portion of the remaining information under section 552.102(b). *See* Open Records Decision Nos. 470, 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees).

Section 552.101 of the Government Code encompasses confidentiality statutes, such as section 6103(a) of title 26 of the United States Code. Section 6103(a) renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms). Section 6103(b) defines the term "return information" as "a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, 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 with respect to the determination of the existence, or possible existence, of liability . . . for any tax, penalty, interest, fine, forfeiture, or other imposition, 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). Consequently, the district must withhold the submitted W-4 form pursuant to section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.<sup>3</sup> *See* Gov't Code §§ 552.117(a)(1), .024. We note section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). We also note a post office box number is not a "home address" for purposes of section 552.117. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, if the current and former employees at issue

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

timely elected to withhold personal information pursuant to section 552.024, then the district must withhold the information we have marked under section 552.117(a)(1); however, the district may only withhold the marked cellular telephone number if the employee at issue paid for the cellular telephone service with his own funds.<sup>4</sup> The district may not withhold this information if the employees at issue did not make timely elections to keep the marked information confidential.

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[.]” Gov’t Code § 552.130(a)(1). Accordingly, the district must withhold the Texas driver’s license number we have marked in the remaining information under section 552.130.

Section 552.136 of the Government Code provides “[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). Section 552.136(a) defines “access device” as “a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the district must withhold the insurance group number we have marked under section 552.136.

Section 552.137 of the Government Code provides for the confidentiality of “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 owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The e-mail addresses we have marked are not of a type specifically excluded by section 552.137(c). *See id.* § 552.137(c). Therefore, the district must withhold the e-mail addresses we have marked under section 552.137, unless their owners consent to their release.

In summary, the district must withhold the (1) personal financial information we have marked under section 552.102(a) of the Government Code; (2) W-4 form we have marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; (3) information we have marked under section 552.117(a)(1) of the Government Code to the extent it pertains to current or former county employees who timely elected confidentiality; however, the district may only

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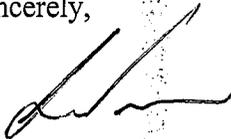
<sup>4</sup>Regardless of the applicability of section 552.117 of the Government Code, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b).

withhold the marked cellular telephone number if the employee at issue paid for the cellular telephone service with his own funds; (4) Texas driver's license number we have marked under section 552.130 of the Government Code; (5) insurance group number we have marked under section 552.136 of the Government Code; and (6) personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the district receives consent for their release.<sup>5</sup> The district must release the remaining information.

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](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, toll free, at (888) 672-6787.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 375741

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including: a W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code; a Texas driver's license number under section 552.130 of the Government Code; and e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.