



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2010

Ms. Laura C. Rodriguez  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2010-05864

Dear Ms. Rodriguez:

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# 377286.

The Northside Independent School District (the "district"), which you represent, received a request for copies of a named individual's check stubs or earning statements for a specified period of time. You state the district will redact social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. 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." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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

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<sup>1</sup>We note that 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.

formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Bd.*, 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 552.102(a) claim in conjunction with its common-law privacy claim under section 552.101 of the Government Code.

In *Industrial Foundation*, the Texas Supreme Court stated that the information is excepted from disclosure if (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has found personal financial information not relating to the 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). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy but 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. 545 (1990), 373 (1983); *see also* ORD 600 (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax compensation to group insurance, health care or dependent care), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review of the submitted information, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate public interest. Accordingly, the district must withhold the information you have marked, in addition to the information we have marked, under section 552.101 in conjunction with common-law privacy and section 552.102(a).

We note that some of the information at issue contains information that may be excepted under section 552.117. Section 552.117(a)(1) excepts from disclosure the current and former 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. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You have not indicated whether the employee whose information we have marked in the remaining documents has timely elected to keep her information confidential. The district may only withhold information under section 552.117 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. Accordingly, if the employee timely elected to keep her personal information confidential, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the employee did not make such an election, the information must be released.

In summary, the district must withhold the marked information under section 552.101 in conjunction with common-law privacy and section 552.102(a). If the employee whose information we have marked timely elected to keep her personal information confidential, the district must withhold the marked information under section 552.117(a)(1). The remaining information 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](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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/eeg

Ref: ID# 377286

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)