



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 28, 2010

Ms. Sandi P. Tarski  
Walsh, Anderson, Brown, Gallegos and Green, P.C.  
For La Marque Independent School District  
P.O. Box 168046  
Irving, Texas 75016

OR2010-11357

Dear Ms. Tarski:

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# 388400.

The La Marque Independent School District (the "district"), which you represent, received a request for all documents and communications pertaining to the qualifications of all applicants, interviews, and hiring for the Assistant Superintendent for School Improvement position. You state the district has provided most of the requested information to the requestor. You claim portions of the submitted college transcripts 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 552.102 of the Government Code excepts from disclosure all information in a transcript from an institution of higher education maintained in the personnel file of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). We note section 552.102(b) applies only to transcripts contained in personnel files maintained by the public school that received the request for information. In this instance, you state the individual whose transcript information is at issue is an employee of a school district other than the district and was merely an applicant for the position specified in the request. Thus, because the information at issue is not maintained in a personnel file of the district, you have failed to demonstrate the applicability of section 552.102(b) of the Government Code to the information at issue and the marked information may not be withheld on this basis.

You assert the marked information is confidential under both common-law and constitutional privacy. 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 section encompasses the doctrines of common-law and constitutional 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). This office has found the public has a legitimate interest in information relating to applicants and employees of governmental bodies and their employment qualifications. See Open Records Decision Nos. 542 at 5 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); see also Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Although you generally assert the marked information in the transcripts is protected under common-law privacy, you have not provided any arguments explaining how common-law privacy applies to the marked information. Furthermore, we find there is a legitimate public interest in the marked transcript information as it pertains to the applicant's employment qualifications and background. Consequently, the district may not withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

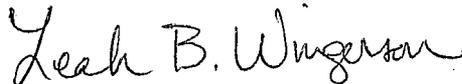
Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not provided any arguments explaining how the marked transcript information pertains to the zones of privacy. See Open Records Decision No. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of public concern). Furthermore, we find the public's need to know information relating to the employment qualifications and background of a potential government employee generally outweighs an individual's privacy interests for purposes of constitutional privacy. Thus, we find you have not demonstrated how any portion of the marked information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Accordingly, none of the marked information may be withheld under section 552.101 of the Government Code in conjunction with

constitutional privacy. As you have not claimed any other exceptions to disclosure, the submitted information must be released.<sup>1</sup>

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 388400

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>We note the information includes a social security number. 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).