



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 12, 2010

Ms. Leila Feldman
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2010-17184

Dear Ms. Feldman:

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# 399871.

The Fort Bend Independent School District (the "district") received a request for all records pertaining to a named district employee. You state you will make the majority of the information available to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

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 of the Government Code encompasses information protected by other statutes. Prior decisions of this office have held section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 600 (1992) (W-4 forms).

¹We assume that the "representative samples" of records submitted to this office are 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.

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.2d1111 (4th Cir. 1993). Thus, the submitted W-4 form constitutes tax return information that is confidential under federal law and must be withheld under section 552.101.

Section 552.101 also encompasses the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12101 *et seq.*, which provides for the confidentiality of certain medical records of employees and applicants. Specifically, the ADA provides that information about the medical conditions and medical histories of applicants or employees must be (1) collected and maintained on separate forms, (2) kept in separate medical files, and (3) treated as a confidential medical record. In addition, an employer's medical examination or inquiry into the ability of an employee to perform job-related functions is to be treated as a confidential medical record. 29 C.F.R. § 1630.14(c); *see also* Open Records Decision No. 641 (1996). The Equal Employment Opportunity Commission (the "EEOC") determined that medical information for the purposes of the ADA includes "specific information about an individual's disability and related functional limitations, as well as, general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual." See Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3 (Oct. 1, 1997). Federal regulations define "disability" for the purposes of the ADA as "(1) a physical or mental impairment that substantially limits one or more of the major life activities of the individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment." 29 C.F.R. § 1630.2(g). The regulations further provide that physical or mental impairment means the following: (1) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. See *id.* § 1630.2(h). You claim portions of the submitted information are confidential under the ADA. However, you do not explain, and the information does not reveal, how this information pertains to any individual with a disability for purposes of the ADA. Accordingly, we find that you have failed to establish that any portion of the submitted information is confidential under the

ADA, and the district may not withhold any information under section 552.101 of the Government Code in conjunction with the ADA.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “administrator” in section 21.355 means a person who is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4.

You assert a portion of Exhibit C consists of evaluations of the named district employee. You state that the employee held a certificate or permit required under Chapter 21 of the Education Code at the time of the evaluation and was acting as an administrator at the time of the evaluation. Upon review, we conclude that the information we have marked is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the common-law right of privacy. The doctrine of common-law privacy protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. This office has found 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 the financial transaction between an individual and a governmental body is excepted from 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). Upon review, we find that portions of the submitted information consist of medical and personal financial information that is highly intimate or embarrassing and not of legitimate public concern. Therefore, 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 has failed to demonstrate, however, that any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the remaining information on the basis of common-law privacy.

You claim the submitted transcripts are excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's names, the courses taken, and the degrees obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the district employee's name, courses taken, and degrees obtained, the district must withhold the submitted transcripts pursuant to section 552.102(b) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from 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 the information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). 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 be withheld under section 552.117(a)(1) only on behalf of a current or former 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. You provide documentation showing, that the employee at issue timely elected confidentiality for his home address, home telephone number, and social security number under section 552.024. Therefore, the district must withhold the employee's home address, home telephone number, and social security number, which we have marked, under section 552.117(a)(1) of the Government Code. However, you have not demonstrated that the employee requested confidentiality of his family member information on his election form. Accordingly, the district may not withhold the employee's family member information under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code states 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). 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). Therefore, the district must withhold the partial credit card number, customer

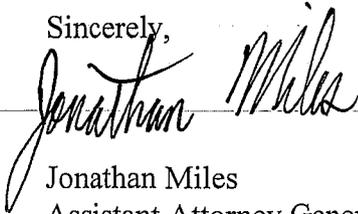
account number, bank account number, and bank routing number you have marked under section 552.136 of the Government Code.²

In summary, the district must withhold (1) the submitted W-4 form under section 552.101 of the Government Code in conjunction with federal law; (2) the evaluations we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; and (3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of the district employee's name, courses taken, and degrees obtained, the district must withhold the submitted transcripts pursuant to section 552.102(b) of the Government Code. The district must withhold the marked employee's home address, home telephone number, and social security number under section 552.117(a)(1) of the Government Code. The district must withhold the partial credit card number, customer account number, bank account number, and bank routing number you have marked under section 552.136 of the Government Code. 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, 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

²We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including W-4 forms under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code and a bank account number and bank routing number under section 552.136, without the necessity of requesting an attorney general decision.

Ref: ID# 399871

Enc. Submitted documents

c: Requestor
(w/o enclosures)