



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2010

Mr. Jaime J. Munoz  
Attorney at Law  
P.O. Box 47  
San Juan, Texas 78589

OR2010-17483

Dear Mr. Munoz:

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# 400587.

The La Joya Independent School District (the "district"), which you represent, received one request from two requestors for (1) the chronos time sheets, audit trail, and payroll leave report for five named employees for a specified period of time, (2) the pay grade levels and annual salaries of the five named employees for the 2009-2010 and 2010-2011 school years, and (3) the application forms and employment start dates of two named employees for the 2010-2011 school year. The district received a second request from one of the same requestors for the written findings of a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.102, 552.103, 552.108, 552.116, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information).

Initially, we note you have submitted an employee's time sheets, audit trail, and payroll leave report that was not requested by the requestor. Therefore, this information, which we have marked, is not responsive to the present request. The district need not release any non-responsive information in response to this request, and this ruling will not address such information.

Next, we note you have not submitted information responsive to the request for the pay grade levels and annual salaries of the five named employees. To the extent information regarding this portion of the request existed on the date the district received this request, we assume you have released it. If you have not released any such information, you must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note portions of the submitted information are subject to section 552.022 of the Government Code. This section provides, in pertinent part:

(a) [T]he following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). In this instance, the requestor specifically seeks employees' dates of employment. This submitted information is subject to section 552.022(a)(2) of the Government Code, and must be released unless it is confidential under "other law." Although you raise section 552.116 of the Government Code for the dates of employment, section 552.116 is a discretionary exception to disclosure that protect the governmental body's interests and may be waived. *See* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.116 is not other law that makes information confidential for purposes of section 552.022. Consequently, the district may not withhold the dates of employment under section 552.116 of the Government Code. However, you also claim section 552.102 for the dates of employment, which is a mandatory exception to disclosure that is "other law" for purposes of section 552.022. Thus, we will consider your argument under this section for the information subject to section 552.022. We will also address your argument under section 552.116 for the remaining information at issue not subject to section 552.022.

Section 552.102(a) excepts 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 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 of the Government Code.

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.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. We note 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 (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 you have failed to demonstrate how any portion of the information at issue is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of this information is confidential under the doctrine of common-law privacy, and it may not be withheld under section 552.102(a) on that basis. As you raise no additional arguments against release of the information subject to section 552.022(a)(2), it must be released.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, the information at issue consists of an internal affairs investigation report made by the district’s police department. We note that section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state the submitted report pertains to a pending criminal investigation by the district’s police department. Based on this representation and our review, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-87; Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, with the exception of basic information, the district may withhold the submitted report pursuant to section 552.108(a)(1) of the Government Code.<sup>1</sup>

Section 552.116 of the Government Code provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

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<sup>1</sup>As our ruling is dispositive, we do not address your remaining arguments for this information, except to note basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. See Open Records Decision No. 597 (1991).

Gov't Code § 552.116. You generally claim the remaining information is excepted from disclosure under section 552.116. However, you have not submitted any comments explaining how the information at issue was prepared or maintained in relation to an audit authorized or required by any of the laws or authorities specified in section 552.116(b)(1). *See id.* § 552.301(e)(1)(A). Therefore, we find you have failed to demonstrate the applicability of section 552.116 to any of the remaining information. Consequently, the information at issue may not be withheld under section 552.116 of the Government Code.

We note portions of the remaining information may be excepted from disclosure under sections 552.117, 552.130, and 552.137 of the Government Code.<sup>2</sup> Section 552.117(a)(1) 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 this information be kept confidential under section 552.024 of the Government Code. *Id.* § 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 only be withheld under section 552.117(a)(1) 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We note section 552.117 is also applicable to personal cellular telephone numbers, provided 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 telephone numbers paid for by governmental body and intended for official use). We also note that an individual's personal post office box number is not a "home address" and, therefore, may not be withheld under section 552.117. *See* 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. 1979, 69th Leg. (1985)) (emphasis added). You do not indicate whether the district employees whose information is at issue requested confidentiality pursuant to section 552.024. Accordingly, if these employees timely elected confidentiality, 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 numbers if the numbers are not paid for by the district. If the employees did not timely elect

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<sup>2</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).

confidentiality, the district may not withhold any of the marked information under section 552.117(a)(1).<sup>3</sup>

Section 552.130 of the Government Code excepts from public 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). Upon review, we find the district must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail address at issue is not a type specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure.

In summary, with the exception of basic information, the district may withhold the submitted report pursuant to section 552.108(a)(1) of the Government Code. To the extent the employees whose information is at issue timely elected to keep their personal information confidential under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, the district may only withhold the marked cellular telephone numbers if the numbers are not paid for by the district. The district must also withhold the information we have marked under section 552.130 of the Government Code and the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its disclosure.<sup>4</sup> The remaining responsive information must be released to the requestors.

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.

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<sup>3</sup>Regardless of the applicability of section 552.117, 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).

<sup>4</sup>We 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 Texas driver's license numbers under section 552.130 of the Government Code and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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,

A handwritten signature in black ink, appearing to read "Sarah Casterline", with a stylized flourish at the end.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 400587

Enc. Submitted documents

c: Requestor  
(w/o enclosures)