



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2011

Ms. Sarah Orman
For Bay City Independent School District
Walsh, Anderson, Brown, Gallegos and Green, P.C.
P.O. Box 2156
Austin, Texas 78768-2156

OR2011-14091

Dear Ms. Orman:

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# 431388.

The Bay City Independent School District (the "district"), which you represent, received a request for a named district employee's personnel file. You have made some of the requested information available to the requestor. You have redacted driver's license numbers under section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You have redacted social security numbers pursuant to section 552.147 of the Government Code.² You have also redacted personal e-mail addresses under section 552.137

¹Open Records Decision No. 684 is 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, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercedes Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

²Section 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).

of the Government Code pursuant to Open Records Decision No. 684 (2009).³ You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.152 of the Government Code.⁴ 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 common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Upon review, we find no portion of the information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, the district may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

You state some of the submitted information is subject to section 552.102(a) of the Government Code, which 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). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we agree the date of birth information you have marked must be withheld under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from public 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 exception further provides, however, “the degree obtained or the curriculum on a transcript in the personnel file of the

³We 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 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.

⁴Although you claim the information is excepted under section 552.151 of the Government Code, we note the 82nd Texas Legislature renumbered section 552.151 to section 552.152 of the Government Code. Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20).

employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, with the exception of the employee’s name, courses taken, and degree obtained, the district must withhold the submitted college transcripts under section 552.102(b) of the Government Code.

We note that some of the remaining information may be subject to section 552.117 of the Government Code.⁵ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 117.(a)). Whether a particular piece of 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). The district may only withhold information under section 552.117(a)(1) if the individual concerned elected confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, if the district employee whose personal information is at issue 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 timely elect to withhold her personal information, the district may not withhold the information at issue under section 552.117(a)(1).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or another state or country. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov’t Code § 552.130). The district must withhold the driver’s license information we have marked under section 552.130.

Section 552.152 provides:

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is excepted from the requirements of Section 552.021 if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

Act of May 9, 2011, 82nd Leg., R.S., S.B. 1303, § 27.001(20) (to be codified as Gov’t Code § 552.152). In this instance, you state release of the remaining information at issue would subject the named individual to a substantial threat of physical harm because the requestor has made various statements against the named individual and submitted multiple public

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information requests related to the named individual. Upon review of your arguments and the information at issue, we find you have failed to demonstrate release of the remaining responsive information would subject the named individual to a substantial threat of physical harm. Therefore, we conclude section 552.152 is inapplicable to the information at issue, and the district may not withhold any portion of it under section 552.152 of the Government Code.

In summary, the district must withhold the information you have marked under section 552.102(a) of the Government Code. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the submitted college transcripts under section 552.102(b) of the Government Code. If the district employee whose personal information is at issue 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 timely elect to withhold her personal information, the district may not withhold the information at issue under section 552.117(a)(1). The district must withhold the driver's license information we have marked under section 552.130 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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 431388

Enc. Submitted documents

c: Requestor
(w/o enclosures)