



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 11, 2011

Ms. Tammy Kuykendall  
Chief Communications Officer  
Duncanville Independent School District  
802 South Main Street  
Duncanville, Texas 75137

OR2011-14692

Dear Ms. Kuykendall:

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# 437087.

The Duncanville Independent School District (the "district") received a request for a listing of all district new hires for the 2011-2012 school year, including the employee's current campus, home address and telephone number, school e-mail address, current salary, and date of birth, and ownership status of a 403(b) retirement account. You state that most of the responsive information is being made available to the requestor. You claim that employee dates of birth and ownership status of a 403(b) retirement account are excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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). 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 find the employee dates of birth must be withheld under section 552.102(a) of the Government Code. The remaining information at issue is not excepted under section 552.102(a) and may not be withheld on that basis.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”<sup>1</sup> Gov’t Code § 552.101. This section incorporates the doctrine of common-law privacy, which 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82.

The types of information considered intimate and 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. *Id.* at 683. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. See Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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 the information you have marked related to ownership status of a 403(b) retirement account is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the remaining information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, employee dates of birth must be withheld under section 552.102(a) of the Government Code. The district must withhold the remaining information you have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. The remaining submitted information must be released to the requestor.

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

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 cursive, appearing to read "Cindy Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 437087

Enc. Submitted documents

c: Requestor  
(w/o enclosures)