



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 23, 2012

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

OR2012-01040

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# 443069 (ORR 2011-12-164).

The Fort Bend Independent School District (the "district") received a request for the most recent pay statement of a named district employee, including all payroll deductions, and for information related to the employee's liability insurance coverage. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the information you submitted.

We first note the submitted information consists of the named employee's payroll statement. We therefore assume the district has released the rest of the information to which the requestor seeks access, to the extent the information existed when the district received the request. If not, then the district must release any such information immediately.² See Gov't Code §§ 552.221, .301, .302; Open Records Decision No. 664 (2000).

¹Although you do not specifically raise section 552.117, you indicate the district seeks to withhold some of the submitted information under this exception. Accordingly, we will address section 552.117, which is a mandatory exception to disclosure. See Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

²We note the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

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 exception encompasses information other statutes make confidential. Prior decisions of this office have concluded section 6103(a) of title 26 of the United States Code makes tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as information furnished to or collected by the Internal Revenue Service with respect to the determination of the possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). Although you claim section 552.101 of the Government Code in conjunction with section 6103(a), the submitted payroll statement does not constitute tax return information for purposes of section 6103(b). We therefore conclude the district may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of section 6103 of title 26 of the United States Code.

You also claim section 552.101 of the Government Code in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses certain types of personal financial information. Financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9-12 (identifying public and private portions of certain state personnel records), 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis). Thus, a public employee’s allocation of part of the employee’s salary to a voluntary investment program offered by the employer is a personal investment decision, and information about that decision is protected by common-law privacy. *See, e.g.*, ORD 600 at 9-12 (participation in TexFlex), 545 at 3-5 (deferred compensation plan). Likewise, the details of an employee’s enrollment in a group insurance program, the designation of the beneficiary of an employee’s retirement benefits, and an employee’s authorization of direct deposit of the employee’s salary are protected by common-law privacy. *See* ORD 600 at 9-12. This office also has determined a public employee’s net salary is protected by common-law privacy. *See* Attorney General Opinion GA-0572 at 4 (2007). We have marked personal financial information that is highly intimate or embarrassing and not a matter of legitimate public

interest. The district must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim section 552.102 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). On review, we find none of the remaining submitted information is excepted from disclosure under section 552.102(a) of the Government Code. Therefore, none of the remaining information may be withheld on that basis.

Section 552.117(a)(1) of the Government Code 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 this information be kept confidential under section 552.024 of the Government Code. *See id.* §§ 552.117(a)(1), .024. 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)*. 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 confidentiality under section 552.024. You state the employee to whom the submitted information pertains requested that his home address and telephone number be withheld. You did not inform us, however, whether the employee did so prior to the district’s receipt of the present request for information. Nevertheless, we conclude the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code to the extent the employee concerned timely requested confidentiality for the information pursuant to section 552.024 of the Government Code.

In summary, the district must withhold (1) the marked personal financial information under section 552.101 of the Government Code in conjunction with common-law privacy and (2) the information we have marked under section 552.117(a)(1) of the Government Code to the extent the employee concerned timely requested confidentiality for the information under section 552.024 of the Government Code. The rest of the submitted 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 443069

Enc. Submitted documents

c: Requestor
(w/o enclosures)