



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2012

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

OR2012-01145

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# 443154 (ORR 2011-12-163).

The Fort Bend Independent School District (the "district") received a request for the final pay stubs, including all authorized payroll deductions, and the educator's liability insurance binders for two named former employees. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note the district has not submitted the final pay stub for one of the named former employees or the requested educator's liability insurance binders. To the extent the district maintains information responsive to these parts of the request that existed on the date the request was received, we assume you have released it. If you have not released any such information, you must do so at this time. Gov't Code §§ 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).

¹Although you also raised section 552.102 of the Government Code as an exception to disclosure, you did not submit to this office written comments stating the reasons why this section would except any of the submitted information, nor have you identified any information you seek to withhold under this exception; we therefore assume you no longer assert this exception. *See* Gov't Code §§ 552.301, .302.

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 section 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. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms). 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.2d 1111 (4th Cir. 1993). Upon review, we find you have not demonstrated how any portion of the submitted information falls within the definition of “return information” under section 6103(b)(2). Therefore, none of this information is confidential under section 6103(a) and the district may not withhold the information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 demonstrated. See *id.* at 681-82. We note the submitted information contains one of the former named employee’s financial information. This office has found there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See generally Open Record Decision No. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 423 at 2 (1984) (scope of public employee privacy is narrow). Although most of the financial information at issue pertains to financial transactions between the former employee and the district, this office has determined that a public employee’s net pay is protected by common-law privacy. See Attorney General Opinion GA-0572 at 3-5 (2007) (stating net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about given individual that is not of legitimate concern to public). Thus, the district must withhold the net pay we marked under section 552.101 of the Government Code in conjunction with common-law privacy. We also note the submitted information lists the former employee’s payroll deductions. This office has stated there is a legitimate public interest in an employee’s participation in an insurance or retirement program funded in whole or in part by a governmental body. See ORD 600 at 9-12 (identifying public and private portions of certain state personnel records). Accordingly, information relating to such

programs do not constitute confidential personal financial information. On the other hand, a public employee's allocation of part of the employee's salary to a voluntary investment, health or other 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 (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 (deferred compensation information, participation in voluntary investment program, and election of optional insurance coverage). Upon review, we find the financial information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 in conjunction with common-law privacy.

We note that portions of the remaining information may be subject to section 552.117 of the Government Code.² 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 this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *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 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 information. You inform us that the former employee whose information is at issue has requested that her personal information be withheld. Thus, if this individual requested confidentiality under section 552.024 prior to the date the district received the request for information, the district must withhold the personal information we have marked under section 552.117(a)(1). However, if the individual at issue did not timely elect to keep her personal information confidential, none of the remaining information may be withheld under section 552.117(a)(1).

We also note that a portion of the remaining information is subject to section 552.136 of the Government Code. This section provides "[n]otwithstanding any other provision of [the Act], 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). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

originated solely by paper instrument, and includes an account number. *See id* § 552.136(a). The information at issue contains a partial bank account number. This office has determined that bank account numbers are access device numbers for purposes of section 552.136. Accordingly, the district must withhold the partial bank account number we have marked under section 552.136.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual whose information we marked under section 552.117(a)(1) of the Government Code requested confidentiality under section 552.024 of the Government Code prior to the date the district received the request for information, the district must withhold the marked information under section 552.117(a)(1) of the Government Code. However, if this individual did not timely elect to keep her personal information confidential, none of the remaining information may be withheld under section 552.117(a)(1) of the Government Code. The district must withhold the partial bank account number we 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/agn

Ref: ID# 443154

Enc. Submitted documents

c: Requestor
(w/o enclosures)