



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 26, 2012

Ms. Susan K. Bohn  
Deputy Superintendent and General Counsel  
Lake Travis Independent School District  
3322 Ranch Road 620 South  
Austin, Texas 78738

OR2012-04405

Dear Ms. Bohn:

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# 448571.

The Lake Travis Independent School District (the "district") received a request for portions of a certain district employee's personnel file. The district has redacted social security numbers pursuant to section 552.147 of the Government Code.<sup>1</sup> You state the district has redacted certain information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim the submitted information is excepted from disclosure pursuant to sections 552.101, 552.102,

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<sup>1</sup>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>2</sup>Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold specific categories of information without the necessity of requesting an attorney general decision, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, Texas driver's license numbers under section 552.130 of the Government Code, and e-mail addresses of members of the public under section 552.137 of the Government Code. 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 id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Thus, the statutory amendments to section 552.130 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011.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.

and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note, and you acknowledge, the district did not comply with its deadlines under section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(a)-(b), (e). Pursuant to section 552.302 of the Government Code, the submitted information is therefore presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because your claims under sections 552.101, 552.102, and 552.135 of the Government Code can provide compelling reasons for non-disclosure, we will address your arguments under these exceptions.

Next, you state the district has redacted information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>3</sup> Section 552.117 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. Gov't Code § 552.117(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). Therefore, a governmental body must withhold information under section 552.117 on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You have provided documentation showing the named employee has elected to keep her home address, home telephone number, and information revealing whether or not she has family members confidential under section 552.024. However, the election form provides no means for the employee to request her emergency contact information be withheld from disclosure under section 552.117(a)(1). Thus, because the employee did not elect confidentiality for her emergency contact information, the district may not withhold this information, which we have marked for release, under section 552.117(a)(1) of the Government Code. Further, we note the remaining information contains additional information that is subject to section 552.117. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

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<sup>3</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See id.* § 552.024(c)(2).

Section 552.135 of the Government Code provides in part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. You state the information you have marked identifies an employee of the district who reported a potential violation of criminal law to the district and several law enforcement agencies. You state this individual has not consented to public disclosure of her identity. Based on your representations and our review, the district must withhold the information we have marked under section 552.135 of the Government Code. However, you have not demonstrated how any portion of the remaining information you seek to withhold identifies an informer. We therefore conclude the district may not withhold any of the remaining information at issue under section 552.135 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the common-law right of privacy, which protects information if it (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 established. *Id.* at 681-82. The type 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. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). In addition, this office has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Upon review, we find some of the information you have marked would ordinarily be highly intimate or embarrassing and not of legitimate concern. In this instance, however, the individual to whom this information pertains has already been de-identified under section 552.135 of the Government Code. As such, none of this information implicates the privacy rights of an identified individual. Furthermore, we find you have failed to demonstrate any of the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, 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.

Section 552.102(a) of the Government Code 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. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The district must withhold the birth date you have marked under section 552.102(a) of the Government Code.

We note portions of the remaining information are subject to section 552.137 of the Government Code, which 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).<sup>4</sup> Gov’t Code § 552.137(a)-(c). The e-mail addresses we have marked are not a type specifically excluded by section 552.137(c). Accordingly, the district must withhold these e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release under section 552.137(b).

In summary, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must also withhold the information we have marked under sections 552.135 and 52.102(a) of the Government Code. The district must also withhold the e-mail addresses we have marked under section 552.137

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release under section 552.137(b). The district must release the remaining information.

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 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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 448571

Enc. Submitted documents

c: Requestor  
(w/o enclosures)