



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2012

Ms. Cindy Treviño
President
Southside Independent School District Education Foundation
1460 Martinez-Losoya Road
San Antonio, Texas 78221

OR2012-07511

Dear Ms. Treviño:

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# 454084.

The Southside Independent School District Education Foundation (the "foundation") received a request for financial documents detailing the source and use of all funding given to the foundation.¹ You indicate the foundation released some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note the requestor has excluded student names, bank account numbers, and bank routing numbers from his request for information. Therefore, these types of information are not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the foundation need not release such information in response to this request. We note you have marked copies of checks drawn from the foundation's account, as well as certain transactions on a

¹You state the requestor clarified and then amended the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

foundation account register list, as non-responsive. However, this information constitutes financial documents detailing the use of funding given to the foundation and, thus, is responsive to the request for information. Accordingly, we will consider your arguments against disclosure of this and the remaining responsive information.

Next, we note that the foundation has redacted portions of the submitted information other than non-responsive information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue or has statutory authorization to withhold the information in question without requesting a decision under the Act. *See* Gov't Code § 552.301(a), (e)(1)(D) (governmental body requesting decision from attorney general must submit copy of specific information requested). You state the foundation has redacted portions of the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds. These provisions apply only to student records in the custody of educational institutions and to records directly transferred from the educational institution to the third party. 34 C.F.R. § 99.33(a)(2). However, the information at issue is maintained by the foundation, which is not an educational institution. Furthermore, you inform us the foundation received the information at issue from students, not from the educational institutions that created them. We, therefore, find the foundation may not withhold the redacted information on the basis of FERPA. We note Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies allowing them to withhold the e-mail address of a member of the public under section 552.137 of the Government Code without requesting a decision from this office. Accordingly, the foundation had the authority to redact the e-mail address without first seeking a decision. However, to the extent the remaining information you have redacted is responsive, we find the foundation has failed to comply with section 552.301(e) with regard to this information. *See* Gov't Code § 552.301(a), (e)(1)(D); Open Records Decision No. 673 (2000). In this instance, we are not able to discern the nature of all of the remaining redacted information. Because we are not able to review some of this information, we have no means of determining whether it is excepted from release pursuant to the Act. Therefore, pursuant to section 552.302 of the Government Code, to the extent the remaining information you have redacted is responsive to the request, the foundation must release it. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code. In the future, the foundation must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 or the foundation has statutory authorization to withhold the information in question without requesting a decision under the Act. *See* Gov't Code §§ 552.301(e)(1)(D), .302; ORD 673.

Section 552.114(a) of the Government Code excepts from disclosure student records “at an educational institution funded wholly or partly by state revenue.” Gov’t Code § 552.114(a). This office has determined the same analysis applies under section 552.114 and FERPA. These provisions are applicable only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. *See* 34 C.F.R. § 99.33(a)(2). You contend some of the responsive information is confidential under section 552.114. As previously discussed, the foundation is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not “educational agency” for purposes of FERPA). Furthermore, you state the foundation received the responsive information for which you raise section 552.114 from the students receiving scholarships. Thus, the information at issue was not received directly from an educational institution. We therefore conclude the foundation may not withhold any of the responsive information at issue on the basis of section 552.114 of the Government Code.

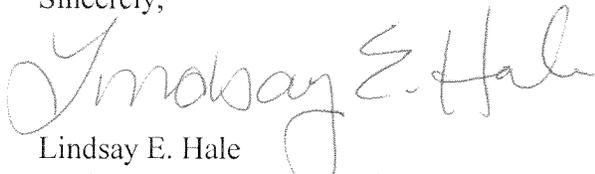
You contend some of the responsive information is protected under common-law privacy. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 of the Government Code 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 satisfied. *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. *Id.* at 683. Whether the public’s interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992), 545 (1990), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373. However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon our review we find the responsive information is not highly intimate or embarrassing information of legitimate public concern of an identified individual. Therefore, the foundation may not withhold any of the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the foundation must release the responsive 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, 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 cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 454084

Enc. Submitted documents

c: Requestor
(w/o enclosures)