ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 2, 2013

Mr. George Russell Meurer
For Laredo Community College
Kazen, Meurer & Perez, L.L.P.
211 Calle Del Norte, Suite 100
Laredo, Texas 78041

OR2013-11312

Dear Mr. Meurer:

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# 491907.

The Laredo Community College (the "college"), which you represent, received a request for the personnel file concerning a named former employee, including complaints, investigations, and disciplinary actions.[1] You state the college has released some of the information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.114, 552.117, 552.137, and 552.147 of the Government Code.[2] We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the district has withheld some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The United States

[1]We note the requestor clarified his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). *See also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-business-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

[2]Although you do not state section 552.102 as an exception, we understand you to raise it based on your markings and the content of your arguments.

Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.[3] Accordingly, we will not address the applicability of FERPA to the information at issue, except to note records contained in an employee's personnel files are generally not education records subject to FERPA. *See id.* (defining "education records"). However, we will address the applicability of the claimed exceptions to the submitted information.

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 encompasses section 6103(a) of title 26 of the United States Code, which makes tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision No. 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[.]" *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 the W-4 form we have marked constitutes tax return information. The college must withhold this information under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law 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. This office has concluded there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). However, this office has also found information concerning an individual's personal financial choices are of no legitimate public interest and are protected under common-law privacy. *See* 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). Upon review of the submitted information, we

---

[3]A copy of this letter may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/open/20060725usdoe.pdf.

find the information we marked reveals personal financial choices. The college must withhold this information under section 552.101 of the Government Code in conjunction with common-law privacy.[4] The remaining information you seek to withhold either is not highly intimate or embarrassing or there is a legitimate public interest in it. Accordingly, the college may not withhold the remaining 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 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.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we agree the college must withhold the employee date of birth you have marked under section 552.102(a) of the Government Code. However, you also seek to withhold the dates of birth of individuals who are not employed by the college. Section 552.102(a) is not applicable to this information. Accordingly, the college may not withhold the dates of birth of individuals who are not employees of the college under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). You seek to withhold the transcripts of a college employee. This office has interpreted "professional public school employee" to refer to employees of public schools providing "public education" under title 2 of the Education Code, not colleges and universities providing "higher education" under title 3 of the Education Code. Accordingly, the college may not withhold the submitted transcripts under section 552.102(b) of the Government Code.

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. FERPA governs the availability of student records held by educational institutions or agencies receiving federal funds. We note section 552.114 and FERPA apply 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 seek to withhold educational transcripts from other educational institutions that are held by the college as part of an employee's personnel file. However, you have not demonstrated those transcripts were transferred directly from those institutions to the college. Thus, you have not demonstrated the applicability of section 552.114 or of FERPA. Accordingly, the college may not withhold the employee's transcripts on the basis of section 552.114 of the Government Code or FERPA.

---

[4]As our ruling is dispositive, we do not address your remaining claimed exception for this information.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, 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. Gov't Code § 552.117(a). 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 be withheld under section 552.117(a)(1) only 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 the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5–7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). The submitted information contains the employee's election to keep certain information confidential under section 552.117. Upon review of this election, we find it covers only the employee's home address and home telephone number. Accordingly, the college must withhold the employee's home addresses and telephone numbers you have marked, and the additional information we marked, under section 552.117(a)(1) of the Government Code. The college also must withhold the cellular telephone number you marked under section 552.117(a)(1), but only if the cellular service is paid for by the employee. However, because the election does not make the employee's emergency contact information, social security number, and family member information confidential, the college may not withhold any of that information under section 552.117(a)(1) of the Government Code.

Section 552.136(b) of the Government Code 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."[5] Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). This office has concluded insurance policy numbers constitute access device numbers for purposes of section 552.136. Thus, the college must withhold the bank account, bank routing, and insurance policy numbers we marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides, "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). Accordingly, the college must withhold

---

[5]The 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).

the e-mail addresses you marked, and that we marked, under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release.

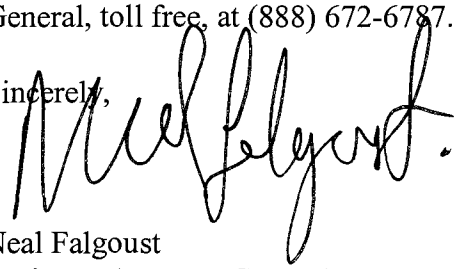
Section 552.147 of the Government Code provides, "[t]he social security number of a living person is excepted from" required public disclosure under the Act. *Id.* § 552.147. Accordingly, the college may withhold the social security numbers you marked under section 552.147 of the Government Code.

In summary, the college must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 6103 of title 26 of the United States Code and in conjunction with common-law privacy. The college must withhold the employee date of birth you marked under section 552.102(a) of the Government Code. The college must withhold the employee's home addresses and telephone numbers you have marked, the information we marked, and the cellular telephone number you marked if the cellular service is paid for by the employee, under section 552.117(a)(1) of the Government Code. The college must withhold the bank account, bank routing, and insurance policy numbers we marked under section 552.136 of the Government Code. The college must withhold the e-mail addresses you marked and that we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses consent to their release. The college may withhold the social security numbers you marked under section 552.147 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 491907

Enc. Submitted documents

c: Requestor
(w/o enclosures)