



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2013

Mr. Jaime J. Munoz
Counsel for the La Joya Independent School District
Attorney at Law
P.O. Box 47
San Juan, Texas 78589

OR2013-12788

Dear Mr. Munoz:

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# 494221.

The La Joya Independent School District (the "district"), which you represent, received a request for information pertaining to a named former district employee, including: (1) salary information for the prior five years of employment; (2) information pertaining to the employee's dealings with a specified company; (3) estimate provided to school board members for damages to a specified building; (4) final settlement amounts for the specified building damage; (5) information pertaining to approval for building repairs; and (6) a specified account in the former employee's name. You state the district has no information pertaining to portions of the request.¹ You also state the district will release some of the requested information. You claim the submitted information is excepted from disclosure under section 552.136 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *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), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. Section 552.101 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 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. *See* 540 S.W.2d 668, 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision No. 600 (1992) (public employee’s withholding allowance certificate, designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and employee’s decisions regarding voluntary benefits programs, among others, protected under common-law privacy). However, 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). Therefore, financial information relating to retirement benefits must be disclosed if it reflects the employee’s mandatory contributions to a retirement program. *See* ORD 600. On the other hand, information is excepted from disclosure if it relates to a voluntary investment the employee made in an optional benefits plan offered by the agency. *Id.* You have not identified whether the submitted information reflects benefits paid by the district, or is the employee’s voluntary financial decision. Thus, to the extent the submitted information reflects the employee’s voluntary allocation of salary to optional investment, retirement, or other financial programs offered by the district, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the submitted information reflects benefits paid by the district, the submitted information is not confidential and may not be withheld on this basis.

To the extent the submitted information is not confidential, we will address your arguments under section 552.136 of the Government Code. Section 552.136 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

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).

a governmental body is confidential.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). We find the district must withhold the account number we have marked under section 552.136 of the Government Code. However, upon review, we find you have failed to demonstrate how the remaining submitted information consists of access device numbers collected, assembled, or maintained by or for a governmental body. Accordingly, none of the remaining information may be withheld on this basis.

In summary, to the extent the submitted information reflects the employee’s voluntary allocation of salary to optional investment, retirement, or other financial programs offered by the district, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the submitted information reflects benefits paid by the district, the district must withhold the account number we have marked under section 552.136 of the Government Code, and 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.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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 494221

Enc. Submitted documents

c: Requestor
(w/o enclosures)