



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2013

Mr. John A. Kazen
Counsel for the Laredo Independent School District
Kazen, Meurer & Perez, L.L.P.
211 Calle Del Norte, Suite 100
Laredo, Texas 78041

OR2013-18271

Dear Mr. Kazen:

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# 504064.

The Laredo Independent School District (the "district"), which you represent, received a request for a list of applicants for a specified position and any information submitted in connection with the applications. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. You have notified the applicants pursuant to section 552.304 of the Government Code. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed 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 information protected by the common-law informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having

a duty of inspection or of law enforcement within their particular spheres.” Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law* § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5.

You seek to withhold the submitted information under the common-law informer’s privilege. However, you have provided no arguments showing how the submitted information identifies an individual who made an initial report of a criminal violation to the district for purposes of the informer’s privilege. Consequently, we find you have failed to demonstrate the applicability of the common-law informer’s privilege to the submitted information. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege.

Section 552.101 of the Government Code also encompasses the common-law right to 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 met. *Id.* at 681-82. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You cite to *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), in support of your argument under common-law privacy for the submitted information. In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of sexual harassment. Here, however, the information at issue does not relate to an investigation of sexual harassment. Therefore, we find that *Ellen* is not applicable in this instance and the district may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy on the basis of *Ellen*. This office has stated in numerous opinions the work behavior and performance of a public employee and the conditions for his or her continued employment are generally matters of legitimate public interest not protected by the common-law right of privacy. See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 438 at 4 (1986) (public has legitimate interest in details of accusation of misconduct against city supervisor), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy). Similarly, the public has a legitimate interest in knowing the reasons for the dismissal of public employees and the circumstances surrounding their termination. Open Records Decision No. 444 at 6 (1986); see Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find you have failed to demonstrate any of the submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, none of the submitted

information may be withheld under section 552.101 on the basis of common-law privacy. However, we note some of the submitted information is subject to sections 552.102, 552.117, 552.130, and 552.137 of the Government Code.¹

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). We have marked dates of birth of public employees that must be withheld under section 552.102(a) of the Government Code. In addition, we have marked dates of birth of applicants that may be subject to section 552.102(a) of the Government Code. Therefore, to the extent the applicants are current or former employees of the district, the district must withhold the information we have marked under section 552.102(a). However, the district may not withhold this information under section 552.102(a) if the applicants concerned are not current or former employees of the district.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee of a governmental body who timely requests this information be kept confidential under section 552.024. Gov't Code §§ 552.024, .117. The protections of section 552.117 only apply to information that the governmental body holds in its capacity as an employer. *See id.* § 552.117(a)(1) (providing that employees of governmental entities may protect certain personal information in the hands of their employer); Open Records Decision No. 455 (1987) (statutory predecessor to section 552.117 does not except information pertaining to applicants who are not employees). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *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 the information or not later than the 14th day after the date on which the employee began employment with the governmental body. *See* Gov't Code § 552.024(b). 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. Section 552.117 encompasses a personal cellular telephone number, unless the cellular 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). We note section 552.117 does not encompass a work phone number.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note the submitted information contains telephone numbers and addresses of district applicants and current district employees; however, we are unable to discern which, if any of the applicants were hired. Therefore, to the extent the information we have marked pertains to applicants who were ultimately hired or to current district employees, the district must withhold such information under section 552.117(a)(1) if the individuals at issue timely requested confidentiality under section 552.024. Conversely, to the extent the individuals whose information we have marked were not ultimately hired or are district employees who did not timely request confidentiality under section 552.024, the district may not withhold their personal information under section 552.117(a)(1) of the Government Code. The marked cellular telephone numbers may only be withheld, however, if the cellular service was not paid for by a governmental body.

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130. Accordingly, the district must withhold the driver's license information we have marked under section 552.130 of the Government Code.²

Section 552.137 of the Government Code 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 owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See id.* § 552.137(a)-(c). We note section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address a governmental entity maintains for one of its officials or employees. Therefore, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release.

In summary, to the extent the information we have marked pertains to applicants who were ultimately hired or current district employees, the district must withhold such information under section 552.102 of the Government Code and section 552.117(a)(1) of the Government Code if the individuals at issue timely requested confidentiality under section 552.024 of the Government Code; however, the marked cellular telephone numbers may only be withheld if the cellular service was not paid for by a governmental body. The district must withhold the Texas driver's license information we have marked under section 552.130 of the Government Code. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release. The remaining information must be released.

² We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Act of May 6, 2013, 83rd Leg., R.S., S.B. 458, § 1 (to be codified as an amendment to Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Gov't Code § 552.130(d), (e).

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,



Tamara R. Strain
Assistant Attorney General
Open Records Division

TRS/bhf

Ref: ID# 504064

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ms. Guadalupe Cortinas
903 Taylor Street
Laredo, Texas 78041
(w/o enclosures)

Mr. Romeo Rodriguez Jr.
178 Arizona Loop
Laredo, Texas 78041
(w/o enclosures)

Ms. Angel E. Velasquez
2133 Lima Loop
Laredo, Texas 78045
(w/o enclosures)

Mr. Homero Perez
3206 Wingate Court
Laredo, Texas 78045
(w/o enclosures)

Mr. Eduardo Romero
8104 Purtzer Drive
Laredo, Texas 78045
(w/o enclosures)

Mr. Sergio Neira
102 Sevilla Loop
Laredo, Texas 78043
(w/o enclosures)

Ms. Laura McCoy
1715 Rosario Court
Laredo, Texas 78043
(w/o enclosures)

Mr. Abraham Hernandez
509 Idylwood Lane
Laredo, Texas 78045
(w/o enclosures)

Mr. Richard Gentry
1318 East Plum Street
Laredo, Texas 78040
(w/o enclosures)

Mr. Juan A. Davila
117 Coahuila Loop
Laredo, Texas 78045
(w/o enclosures)

Mr. Frank Bayardo
6642 Spring Brook
San Antonio, Texas 78249
(w/o enclosures)

Mr. Enrique Kladis
2121 Allen Parkway, Apartment 4023
Houston, Texas 77019
(w/o enclosures)

Mr. Ernesto Guajardo
3316 South Jarvis Street
Laredo, Texas 78046
(w/o enclosures)

Mr. Raul Garcia
2518 Springfield Avenue
Laredo, Texas 78040
(w/o enclosures)

Mr. Aristeo R. Canales
P.O. Box 450372
Laredo, Texas 78045
(w/o enclosures)

Mr. Christopher Aguilera
103 Acadia Loop
Laredo, Texas 78045
(w/o enclosures)