



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2014

Mr. Scott McDonald
Counsel for Edinburg Consolidated Independent School District
O'Hanlon, McCollom & Demerath
808 West Avenue
Austin, Texas 78701

OR2014-07504

Dear Mr. McDonald:

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# 521672.

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for the number of 403(b) plans sold and processed through the district by agents of a named company for two specified time periods. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially we note the majority of information you have submitted consists of information other than the requested number of 403(b) plans sold and processed through the district by agents of the named company for two specified time periods. Therefore, this information is 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 district need not release such information in response to this request.

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 the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. 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) (employee's withholding allowance certificate, 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), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). 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* ORD 373.

Upon review, we find the responsive number of 403(b) plans does not implicate the privacy rights of any identified individuals. Further, we find you have failed to demonstrate the responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions to disclosure have been raised, the district 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.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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/akg

Ref: ID# 521672

Enc. Submitted documents

c: Requestor
(w/o enclosures)