



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 18, 2015

Mr. Rusty Meurer
Counsel for Laredo Community College
Kazen, Meurer & Pérez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042

OR2015-05185

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# 557349.

Laredo Community College (the "college"), which you represent, received three requests for information pertaining to a specified grievance. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.135 of the Government Code. Additionally, you provide documentation showing you have notified two individuals of their rights to submit comments to this office explaining why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from an attorney representing one of the interested third parties. We have considered the submitted arguments and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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 highly intimate or embarrassing

by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, we find neither you nor the interested third party has demonstrated how any portion of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, the college may not withhold any of the submitted information 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). We understand you and the interested third party to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert’s* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. *See Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Texas Supreme Court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *See id.* at 348. Having carefully reviewed the information at issue, we find no portion of the submitted information is subject to section 552.102(a) of the Government Code, and the college may not withhold any of the submitted information on that basis.

Section 552.135 of the Government Code provides the following:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

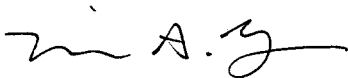
Gov’t Code § 552.135(a)-(b). You and the interested third party generally assert the submitted information is excepted from disclosure under section 552.135. By its terms, however, section 552.135 applies to only public school districts and not to colleges or universities. *See Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997) (stating if language of statute is not ambiguous, court must give effect to plain meaning of its words unless doing so would lead to absurd results). Accordingly, the college may not withhold any of the submitted information under section 552.135 of the Government Code. As no

further exceptions to disclosure have been raised, the college must release the submitted 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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/cbz

Ref: ID# 557349

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

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