



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 30, 2016

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

OR2016-26502

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# 635848.

Laredo Community College (the "college"), which you represent, received a request for four categories of information pertaining to a specified job position. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.136, and 552.137 of the Government Code. Additionally, you state you will notify potentially affected third parties of the request. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state some of the information is subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The United States 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.<sup>1</sup> Consequently,

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

education records that are responsive to a request for information under the Act should not be submitted to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). We note records contained in an employee’s personnel file are generally not education records subject to FERPA. *See id.* § 99.3 (defining “education records”). Additionally, we note FERPA applies only to student records in the custody of an educational institution and records directly transferred from an educational institution to a third party. *See id.* § 99.33(a)(2). You do not explain the submitted employees’ transcripts were transferred directly to the college from an educational institution. Thus, the information at issue is not subject to FERPA and the college may not withhold any portion of them on that basis.

Next, we note you have redacted some information in the submitted documents. You state you will redact information pursuant to sections 552.130(c) and 552.147(b) of the Government Code.<sup>2</sup> However, we note you also have redacted additional information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov’t Code § 552.301(a), (e)(1)(D). You do not assert, nor does our review of our records indicate, the college has been authorized to withhold this additional information without seeking a ruling from this office. *Id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we are able to discern the nature of the information that has been redacted; thus, being deprived of that information does not inhibit our ability to make a ruling. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See* Gov’t Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested”), .302. Thus, in the future, the college should refrain from redacting, without authorization, any information it submits to this office in seeking an open records ruling.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses section 1304(b) of title 8 of the United States Code, which addresses the confidentiality of the registration documentation of aliens under

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<sup>2</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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 id.* § 552.130(d), (e). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

section 1301 of the United States Code. Section 1304(b) provides, “[a]ll registration and fingerprint records made under the provisions of this subchapter shall be confidential, and shall be made available only (1) pursuant to section 1357(f)(2) of this title, and (2) to such persons or agencies as may be designated by the Attorney General.” 8 U.S.C. § 1304(b). Section 264.1(b) of title 8 of the Code of Federal Regulations lists permanent resident cards as documents that constitute evidence of registration. 8 C.F.R. § 264.1(b). Therefore, we find the alien registration numbers we have marked are confidential under section 1304(b) of title 8 of the United States Code. Accordingly, the college must withhold the alien registration numbers we have marked under section 552.101 of the Government Code in conjunction with section 1304(b) of title 8 of the United States Code.<sup>3</sup>

Section 552.101 of the Government Code also encompasses section 1202 of title 8 of the United States Code. Section 1202 provides in part:

(f) Confidential nature of records

The records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance or refusal of visas or permits to enter the United States shall be considered confidential[.]

8 U.S.C. § 1202(f). You contend the information pertaining to the immigration status of certain individuals is confidential under section 1202(f). However, we note the information at issue is maintained by the college. You have not explained how or why information held by the college would qualify as a record of the Department of State or of a diplomatic or consular office of the United States for the purposes of section 1202(f). *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Therefore, as you have not demonstrated the information in question falls within the scope of the federal statute, the college may not withhold the information at issue under section 552.101 of the Government Code in conjunction with section 1202 of title 8 of the United States Code. *See also Medina-Hincapie v. Dep’t of State*, 700 F.2d 737, 741 (D.C. Cir. 1983) (“Under section [1202(f)] the Secretary of State has no authority to disclose material to the public.”); *Perry-Torres v. U.S. Dep’t of State*, 404 F.Supp.2d 140, 143-44 (D. D.C. 2005) (Department of State properly withheld information relating to denial of visa application under 8 U.S.C. § 1202(f)); *Church of Scientology of Cal. v. Dep’t of State*, 493 F.Supp. 418, 423 (D. D.C. 1980) (8 U.S.C. § 1202(f) applicable to document described as “permanent record of State Department”).

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

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<sup>3</sup>As our ruling is dispositive, we need not address your argument against disclosure of this information.

personal privacy[.]”<sup>4</sup> 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 find the college must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.<sup>5</sup>

Section 552.101 of the Government Code also 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. Upon review, we find none of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the college may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

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 employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the college must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the college may not withhold the cellular telephone numbers we have marked if the cellular telephone service

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<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

was paid for by a governmental body. Conversely, to the extent the individuals whose information is at issue did not timely request confidentiality under section 552.024, the college may not withhold the information we have marked under section 552.117(a)(1) of the Government Code. Further, we find you have failed to establish section 552.117 is applicable to any of the remaining information. Thus, the college may not withhold any of the remaining information under section 552.117 of the Government Code.

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. *See Gov't Code § 552.130*. As previously noted, you have redacted some information pursuant to section 552.130(c) of the Government Code. We note the remaining information contains additional information subject to section 552.130. Accordingly, we find the college must withhold the motor vehicle record information you have redacted, and the additional information we have marked, under section 552.130 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 a governmental body is confidential.” *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the college has failed to demonstrate the applicability of section 552.136 to the remaining information, and none of it may be withheld 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 the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their release.

In summary, the college must withhold the alien registration numbers we have marked under section 552.101 of the Government Code in conjunction with section 1304(b) of title 8 of the United States Code. The college must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the college must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the college may not withhold the cellular telephone numbers we have marked if the cellular telephone service was paid for by a governmental body. The college must withhold the motor vehicle record information you have redacted, and the additional information we have marked, under section 552.130 of the Government Code. The college 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 have affirmatively consented to their release. The college must 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](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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/bw

Ref: ID# 635848

Enc. Submitted documents

c: Requestor  
(w/o enclosures)