



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 19, 2016

Ms. Kristi Godden
Counsel for the Hidalgo Independent School District
O'Hanlon, McCollon & Demerath
808 West Avenue
Austin, Texas 78701

OR2016-27949

Dear Ms. Godden:

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# 638484 (Request No. HISD-027).

The Hidalgo Independent School District (the "district"), which you represent, received a request for information regarding coaching stipends for all district coaches during a specified time period. 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.

Section 552.101 of the Government Code excepts "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 also found 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 Nos. 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), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545. Upon review, we find you have not demonstrated any of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses information made confidential by judicial decision and the common-law physical safety exception. The Texas Supreme Court has recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm. *Id.* In applying this standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

You inform us the submitted information consists of stipend amounts paid to district coaches. You state, and provide documentation demonstrating, the district's location places district employees at a higher risk for crimes such as robbery, theft, and home invasion. You argue release of this information "would provide potential criminals with information on exactly how much money those employees earn and place those employees at risk of becoming victims of violent crime[.]" Upon review, we find you have failed to demonstrate the release of the submitted information would create a substantial threat of physical harm to the individuals at issue. Accordingly, the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. The district 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,

A handwritten signature in black ink, appearing to read "Ian Lancaster". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 638484

Enc. Submitted documents

c: Requestor
(w/o enclosures)