



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 27, 2016

Mr. Rusty Meurer  
Counsel for the Laredo Community College  
Kazen, Meurer & Pérez, L.L.P.  
211 Calle Del Norte, Suite 100  
Laredo, Texas 78041

OR2016-28378

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# 639348.

Laredo Community College (the "college"), which you represent, received a request for four categories of information pertaining to the requestor's employment with the college, specified job postings, and interviews pertaining to specified positions. The college states it has released some information to the requestor. The college states it will redact social security numbers under section 552.147(b) of the Government Code.<sup>1</sup> The college states it will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>2</sup> The college claims the

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<sup>1</sup>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. Gov't Code § 552.147(b).

<sup>2</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.137 of the Government Code. We have received comments from the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

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[.]” *See id.* § 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 information we have marked under section 552.102(a) of the Government Code.<sup>3</sup> However, none of the remaining information is of the type made confidential by section 552.102(a) of the Government Code and thus, none of it may be withheld on that basis.

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. We note, however, the public generally has a legitimate interest in information relating to public employment and public employees. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). 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 the basis of common-law privacy.

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<sup>3</sup>As our ruling is dispositive, we need not address the college's remaining argument against disclosure of this information.

The college states it will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>4</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former employees or officials of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). 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 information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. The college states the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. Therefore, the college must withhold the information it has redacted, and the additional information we have marked, under section 552.117(a)(1) of the Government Code.

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 member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the college must withhold the personal e-mail addresses it has marked, and the additional personal e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to public disclosure.

In summary, the college must withhold the information we have marked under section 552.102(a) of the Government Code. The college must withhold the information it has redacted, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. The college must withhold the personal e-mail addresses it has marked, and the additional personal e-mail addresses we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to public disclosure. The remaining information must be released.

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<sup>4</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 639348

Enc. Submitted documents

c: Requestor  
(w/o enclosures)