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ATTORNEY GENERAL OF TEXAS

June 2, 2017

Mr. Jaime J. Muñoz
Counsel for La Joya Independent School District
Law Office of Jaime J. Muñoz
P.O. Box 47
San Juan, Texas 78589

OR2017-12128

Dear Mr. Muñoz:

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# 660245.

The La Joya Independent School District (the "district"), which you represent, received two requests for information pertaining to four named employees during specified time periods. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, 552.137, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information you have submitted is not responsive to the instant requests because it was not created during the specified time periods. This ruling does not address the public availability of any information that is not responsive to these requests, and the district is not required to release such information in response to these requests.²

Additionally, we note the submitted responsive information contains a peace officer's Texas Commission on Law Enforcement ("TCOLE") identification number. Section 552.002(a) of the Government Code defines "public information" as information that is written,

¹Although you do not raise section 552.136 of the Government Code in your brief, we understand you to raise this exception based on your markings in the documents.

²As we are able to make this determination, we need not address your arguments against disclosure of this information.

produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. We understand an officer's TCOLE identification number is a unique computer-generated number assigned to peace officers for identification in TCOLE's electronic database and may be used as an access device number on the TCOLE website. Accordingly, we find the officer's TCOLE identification number in the submitted responsive information does not constitute public information under section 552.002 of the Government Code. Therefore, the TCOLE identification number is not subject to the Act and need not be released to the requestors.

Additionally, we note the district has redacted portions of the submitted responsive information. Pursuant to section 552.130(c) of the Government Code, all governmental bodies may redact motor vehicle record information without the necessity of requesting a decision from this office.³ See Gov't Code § 552.130(c). Accordingly, the district may withhold motor vehicle record information without seeking a decision from this office. Further, the district may redact social security numbers under section 552.147(b) of the Government Code.⁴ We note, the district has also redacted e-mail addresses subject to section 552.137 of the Government Code pursuant to the previous determination in Open

³If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). See Gov't Code § 552.130(d), (e).

⁴Section 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 under the Act. See Gov't Code § 552.147(b).

Records Decision No. 684 (2009).⁵ However, you have also redacted additional information. We note that, pursuant to section 552.301, 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. *See id.* §§ 552.301(a), .301(e)(2). You do not assert, nor does our review of the records indicate, the district has been authorized to withhold this information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2001). Therefore, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of some of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See Gov't Code* § 552.302. However, we are unable to discern the nature of the remaining responsive redacted information. Therefore, the district has failed to comply with section 552.301 of the Government Code as to this information, and this information is presumed public under section 552.302 of the Government Code. Accordingly, the district must release this redacted information, which we have marked for release.

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 1324a of title 8 of the United States Code, which provides that an Employment Eligibility Verification Form I-9 and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the forms in this instance would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude the responsive I-9 forms and their attachments are confidential pursuant to section 1324a of title 8 of the United States Code and must be withheld under section 552.101 of the Government Code.

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). 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 district must withhold the dates of birth you redacted under section 552.102(a) of the Government Code. However, no portion of the remaining responsive information is subject to

⁵Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses, without the necessity of requesting an attorney general decision.

section 552.102(a) of the Government Code. Therefore, the district may not withhold any of the remaining information at issue on that basis.

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. 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 no portion of the remaining responsive information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the district may not withhold any of the remaining responsive information under section 552.101 in conjunction with common-law privacy.

We note the district states it has redacted information subject to section 552.117 of the Government Code.⁶ 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, except as provided by section 552.024(a-1). *See* Gov't Code §§ 552.117(a)(1), .024(a-1). Section 552.024(a-1) of the Government Code provides, "A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the

⁶Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See* Gov't Code § 552.024(c).

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. 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. Upon review, we find some of the information you redacted is subject to section 552.117 of the Government Code. However, we find some of the information you seek to withhold, which we have marked for release, is not subject to section 552.117 and may not be withheld on that basis. Accordingly, with the exception of the information we marked for release, the district must withhold the information you redacted, and the additional information we marked to withhold, under section 552.117(a)(1) of the Government Code if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. However, if the employees whose information is at issue did not timely request confidentiality under section 552.024, the district may not withhold the information at issue under section 552.117(a)(1) 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. Accordingly, the district must withhold the motor vehicle record information you have redacted, and the additional information we marked to withhold, under section 552.130 of the Government Code.

Section 552.136(b) 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"). However, we find you have not explained the employee identification numbers you redacted consist of credit card, debit card, or charge card numbers, or are an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.* §§ 552.136(a), .301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 of the Government Code to the employee identification numbers you redacted, and the district may not withhold them on this ground.

Section 552.147(a-1) of the Government Code provides, "[t]he social security number of an employee of a school district in the custody of the district is confidential." *Id.* § 552.147(a-1). Thus, section 552.147(a-1) makes the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *See id.* § 552.024(a-1) (a school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's

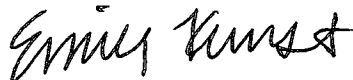
social security number). Reading sections 552.024(a-1) and 552.147(a-1) together, we conclude that section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Accordingly, the district must withhold the social security numbers you redacted, and the additional social security numbers we marked to withhold, under section 552.147(a-1) of the Government Code.

In summary, the TCOLE identification number is not subject to the Act and the district need not release it to the requestor. The district must release the redacted information we marked for release under section 552.302 of the Government Code. The district must withhold the responsive I-9 Forms and their attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. The district must withhold the dates of birth you redacted under section 552.102(a) of the Government Code. With the exception of the information we marked for release, the district must withhold the information you redacted, and the additional information we marked to withhold, under section 552.117(a)(1) of the Government Code if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code. The district must withhold the motor vehicle record information you redacted, and the additional information we marked to withhold, under section 552.130 of the Government Code. The district must withhold the social security numbers you redacted, and the additional social security numbers we marked to withhold, under section 552.147(a-1) of the Government Code. The remaining information must be released.

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,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/eb

Ref: ID# 660245

Enc. Submitted documents

c: Requestor
(w/o enclosures)