



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 10, 2017

Ms. Kristi Godden
Counsel for La Joya Independent School District
O'Hanlon, McCollom, and Demerath
808 West Avenue
Austin, Texas 78701

OR2017-18166

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# 670479 (LJISD-053).

The La Joya Independent School District (the "district"), which you represent, received a request for the work history, salary, and bonus information pertaining to twenty named individuals. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

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

¹We note the district did not comply with section 552.301 of the Government Code in requesting a ruling from this office. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

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. However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See ORDs. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Furthermore, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. See, e.g., Open Records Decision Nos. 562 at 10 (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private).

Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, it is not clear whether the listed payroll deductions and benefits reflect mandatory participation by the employees or are the employees' voluntary financial decisions. Thus, to the extent this information reflects the employees' voluntary allocations of salary to optional investment, retirement, or other financial programs offered by the district, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, to the extent the information at issue reflects the employees' mandatory participation in the district's retirement program or benefits paid by the district, the deduction amounts are not confidential and may not be withheld on that basis. In either instance, the district must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the district has failed to demonstrate the remaining information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the remaining information under section 552.101 in conjunction with common-law privacy.

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).³ See Gov't Code §§ 552.117(a)(1), .024. 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. However, an individual's personal post office box number is not a "home address" for purposes of section 552.117, and therefore may not be withheld under section 552.117. See Open Records Decision No. 622 at 6 (1994) (purpose of section 552.117 is to protect public employees from being harassed at home); see also Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied). 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. 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. Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).

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). Upon review, we find the district must withhold the social security numbers of the district employee we marked under section 552.147(a-1) of the Government Code.

In summary, to the extent the information we have marked reflects the employees' voluntary allocations of salary to optional investment, retirement, or other financial programs offered by the district, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the

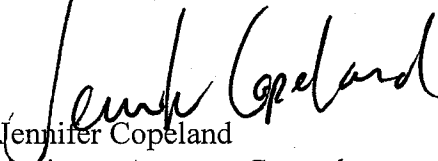
³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

district must withhold the information we marked under section 552.117(a)(1) of the Government Code. The district must withhold the social security numbers of the district employees we marked under section 552.147(a-1) of the Government Code. The district 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, 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,



Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/sb

Ref: ID# 670479

Enc. Submitted documents

c: Requestor
(w/o enclosures)