



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 23, 2019

Mr. Augustin Rivera, Jr.
General Counsel
Del Mar College District
101 Baldwin Boulevard
Corpus Christi, Texas 78404-3897

OR2019-01977

Dear Mr. Rivera:

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# 747340.

The Del Mar College District (the "district") received a request for the personnel file of a named professor. The district states it is releasing some of the requested information. The district claims the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception the district claims and reviewed the submitted representative sample of information.¹

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). This office has interpreted "professional public school employee" to refer to employees of public schools providing "public education" under title 2 of the Education Code, not colleges and universities providing "higher education" under title 3 of the Education Code. The employees at issue are not

¹We 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 those records contain substantially different types of information than that submitted to this office.

professional public school employees. Accordingly, the college may not withhold the submitted transcripts under section 552.102(b).

Some of the submitted information is subject to sections 552.102(a) and 552.117 of the Government Code.² Section 552.102(a) 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). Accordingly, the district must withhold the employee’s date of birth we have marked under section 552.102(a) of the Government Code.

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). 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, if the individual whose information is 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, if the individual 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).³

In summary, the district must withhold the employee’s date of birth we have marked under section 552.102(a) of the Government Code. If the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

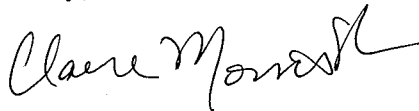
³Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office. *See* Gov’t Code § 552.147(b).

must withhold the information we marked under section 552.117(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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/eb

Ref: ID# 747340

Enc. Submitted documents

c: Requestor
(w/o enclosures)