



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 1, 2020

Mr. Mario G. Perez
Counsel for the Edgewood Independent School District
J. Cruz & Associates, LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2020-21887

Dear Mr. Perez:

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# 842524.

The Edgewood Independent School District (the "district"), which you represent, received a request for candidate applications for the school board during certain time periods and pay scale information. You state the district has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information is subject to section 1.012 of the Election Code, which provides as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

(1) anything distributed or received by government under this code;

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (d)(3). An application for a place on an election ballot “is public information immediately on its filing.” *Id.* § 141.035. Therefore, under section 1.012(a), the information at issue is public information subject to disclosure, except as provided by the Act. *See id.* § 1.012(a), (c). Accordingly, we will address your arguments against disclosure.

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. Further, we note the names, home addresses, and telephone numbers of living members of the public are generally not highly intimate or embarrassing. *See* Open Records Decision Nos. 551 at 3 (disclosure of person’s name, address, or telephone number not invasion of privacy), 455 at 7 [(1987)] (home addresses and telephone numbers not protected under privacy). The Third Court of Appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the district must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. However, the district has failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Thus, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

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). Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the district must withhold the e-mail addresses you marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure.

In summary, the district must withhold all public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The district

must withhold the e-mail addresses you marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their disclosure. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/jm

Ref: ID# 842524

Enc. Submitted documents

c: Requestor
(w/o enclosures)