



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 28, 2020

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 South Greenville Avenue
Richardson, Texas 75081-4198

OR2020-27048

Dear Ms. Martin:

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# 850652.

The Richardson Independent School District (the "district") received a request for communications sent amongst specified categories of individuals during a specified time period.¹ You indicate you will release some information. You state you redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You also state you will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, motor vehicle record information pursuant to section 552.130(c) of the Government Code, e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No.

¹ The district states it sought clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² 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 or student 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. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

684 (2009), and social security numbers pursuant to section 552.147(b) of the Government Code.³ You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.⁴ We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁵

Initially, you state the district will withhold employee identification numbers from the information you release to the requestor pursuant to Open Records Letter No. 2008-01744 (2008). In that ruling, we concluded the employee identification numbers the district sought to withhold did not constitute public information under section 552.002 of the Government Code. Accordingly, we ruled that information was not subject to the Act and need not be released to the requestor.

In Open Records Decision No. 673 (2001), this office set forth the circumstances under which a governmental body may rely on a ruling from this office as a previous determination for purposes of section 552.301(a) of the Government Code. *See* Open Records Decision No. 673. In that decision, this office noted there are two types of previous determinations. The first type exists when the requested information is precisely the same information as was addressed in a prior attorney general ruling, the ruling was addressed to the same governmental body, the ruling concluded the information is or is not excepted from disclosure, and the facts, circumstances, and law on which the prior ruling was based have not changed. *Id.* at 6-7. The second type is an attorney general decision that explicitly grants a governmental body or class of governmental bodies a previous determination that may be relied upon to withhold a specific type of information without seeking an attorney general's ruling if certain conditions are met. *Id.* at 7-8.

³ Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 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 id.* § 552.024(c). Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. 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).

⁴ Although the district claims section 552.101 of the Government Code in conjunction with common-law privacy for the submitted date of birth, we note section 552.102 is the proper exception for information the district holds in an employment capacity.

⁵ We 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.

We note Open Records Letter No. 2008-01744 does not authorize the district to withhold employee identification numbers on the basis of section 552.002 without the necessity of again requesting an attorney general decision with regard to the applicability of section 552.002. *See* Gov't Code § 552.301(a); ORD 673 at 7-8. Thus, the district may not rely on Open Records Letter No. 2008-01744 as a second type of previous determination and withhold any of the requested information on that basis.

You state the district will redact information pursuant to section 552.136(c) of the Government Code.⁶ 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.” Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the district must withhold the information we marked under section 552.136 of the Government Code.⁷

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy).

Upon review, we find the information we marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information we 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 at issue is highly intimate or embarrassing and of no legitimate public interest. Thus, the district may not withhold the remaining information at issue under section 552.101 in conjunction with common-law privacy.

⁶ Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

⁷ As our ruling is dispositive, we need not address your remaining argument against disclosure of this 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.” 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). We note dates of birth pertaining to individuals who have been de-identified are not protected as the de-identified individuals’ privacy rights are, thus, protected. The date of birth you marked belongs to a de-identified individual. Thus, we find the date of birth you marked is not subject to section 552.102(a) of the Government Code, and the district may not withhold the information at issue on that basis.

Section 552.1175 of the Government Code may be applicable to some of the remaining information.⁸ Section 552.1175 protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. *See* Gov’t Code § 552.1175. Section 552.1175 applies, in part, to “employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters[.]” *Id.* § 552.1175(a)(5). Section 552.1175 also encompasses a personal cellular telephone number, unless the cellular telephone service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 is not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Some of the remaining information pertains to an individual who may be subject to section 552.1175 of the Government Code. Thus, to the extent the information we marked pertains to an individual who is subject to section 552.1175(a), the individual elects to restrict access to the information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body, the district must withhold the information we marked under section 552.1175 of the Government Code. However, if the individual does not elect to restrict access to his information in accordance with section 552.1175(b) or the cellular telephone service is paid for by a governmental body, the information at issue may not be withheld under section 552.1175 of the Government Code.

In summary, the district must withhold the information we marked under section 552.136 of the Government Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the information we marked pertains to an individual who is subject to section 552.1175(a), the individual elects to restrict access to the information in accordance with section 552.1175(b), and the cellular telephone service is not paid for by a governmental body, the district must withhold the information we marked under section 552.1175 of the Government Code. The district must release the remaining information.

⁸ The 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).

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,

Meagan Hunter
Assistant Attorney General
Open Records Division

MH/be

Ref: ID# 850652

Enc. Submitted documents

c: Requestor
(w/o enclosures)