



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2022

Mr. Dean Micknal
Counsel for the Duncanville Independent School District
Leasor Crass, P.C.
302 West Broad Street
Duncanville, Texas 76063

OR2022-01797

Dear Mr. Micknal:

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# 926088.

The Duncanville Independent School District (the "district"), which you represent, received a request for eleven categories of information related to all district employees. You state you will release some information, with redactions made pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim some of the submitted information is not subject to the Act. You further claim some of the requested information is excepted from disclosure under section 552.102 of the Government Code.² We have considered your arguments and reviewed the submitted representative sample of information.³

¹ 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 an adult student's 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 educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

² Although you also raise section 552.101 of the Government Code, you makes no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the information at issue. *See* Gov't Code §§ 552.301, .302.

³ We assume that 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

The Act is applicable only to “public information.” Gov’t Code § 552.021. Section 552.002(a) of the Government Code defines “public information” as

[I]nformation that is written, 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.

Id. § 552.002(a). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The submitted information contains employee identification numbers of district employees. In Open Records Decision No. 581 (1990), this office determined that 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. You inform our office these computer-generated identification numbers were created and assigned to the district employees at issue and indicate they have no significance other than their use as a tool for

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.

the maintenance, manipulation, or protection of district property. Based on this representation and our review, we agree the employee identification numbers at issue do not constitute public information under section 552.002 of the Government Code. Accordingly, the employee identification numbers are not subject to the Act and the district is not required to release them.

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). Accordingly, the district must withhold all current and former employees’ dates of birth under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1).⁴ See Gov’t Code §§ 552.117(a)(1), .024; see also *id.* § 552.024(a-1). We note a Post Office Box may not be withheld under section 552.117(a)(1). See Open Records Decision No. 622 (1994). 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 only be withheld under section 552.117(a)(1) on behalf of a current or former employee 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. Therefore, if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold all home addresses and home telephone numbers in the remaining information under section 552.117(a)(1) of the Government Code.

In summary, the employee identification numbers are not subject to the Act and the district is not required to release them. The district must withhold all current and former employees’ dates of birth under section 552.102(a) 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 all home addresses and home telephone numbers in the remaining information under section 552.117(a)(1) of the Government Code.⁵ The district must release the remaining information.

⁴ 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).

⁵ We note you have not submitted the dates of birth, home addresses, or home telephone numbers for our review. Although in this instance we can determine to what extent this fungible information may be excepted from disclosure, we advise the district in the future to submit for review the information it seeks to protect from disclosure and for which it seeks a ruling from this office. See Gov’t Code §§ 552.301, .302.

Finally, you also ask this office to issue a previous determination that would permit the district to withhold the dates of birth of its current and former employees under section 552.102(a) of the Government Code without requesting a ruling from this office. Open Records Decision No. 673 (2001). We decline to issue such a previous determination at this time. Accordingly, 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,

Tim Neal
Assistant Attorney General
Open Records Division

TN/ba

Ref: ID# 926088

Enc. Submitted documents

c: Requestor
(w/o enclosures)