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ATTORNEY GENERAL OF TEXAS

July 14, 2022

Ms. Kristi Godden
Attorney for Pharr-San Juan-Alamo Independent School District
O'Hanlon, Demerath & Castillo
808 West Avenue
Austin, Texas 78701

OR2022-20336

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# 959740 (ORR#22-023) .

The Pharr-San Juan-Alamo Independent School District (the "district"), which you represent, received a request for the personnel file of a named individual. You claim the submitted information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.102(b) of the Government Code excepts from public 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 exception further provides that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.*; see also Open Records Decision No. 526 (1989). However, you inform us the employee named in the request is deceased. We note section 552.102 is designed to protect personal privacy of individuals, and the right to privacy expires at death. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Upon review, we find the submitted transcripts belong to the deceased employee. Further, you failed to demonstrate the applicability of section 552.102(b) of the Government Code to any of the remaining information, and the district may not withhold any information on that basis.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 encompasses other statutes, including 1324a of title 8 of the United States Code. Section 1324a provides that an Employment Eligibility Verification Form I-9 and “any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Accordingly, the district must withhold the submitted I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States 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). Because the protection afforded by section 552.117 includes “current or former” officials or employees, this protection generally does not lapse at death, as it is also intended to protect the privacy of the employee’s family members. 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 employee at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we indicated under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the submitted I-9 form under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code. To the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we indicated 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.

¹ The Office of the Attorney General will raise mandatory exceptions 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 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,

Amy Shipp
Assistant Attorney General
Open Records Division

ALS/mo

Ref: ID# 959740

Enc. Submitted documents

c: Requestor
(w/o enclosures)