



August 2, 1999

Mr. Michael J. Currie
Henslee, Fowler, Hepworth & Schwartz
800 Frost Bank Plaza
816 N. Congress Avenue
Austin, Texas 78701-2443

OR99-2167

Dear Mr. Currie:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126199.

The Navarro Independent School District (the "district") received a request for a variety of information, including certain contracts, information about where the district trustees are employed, and the credit card statements for the district's VISA account from 1995 to the date of the request. You contend that the credit card information is confidential. The district apparently created a document in order to respond to the request for information about the trustees' employment, though you assert this document is private. We note that a governmental body is not obligated to create information to respond to a public inquiry or to provide information that it does not have. Open Records Decision Nos. 452 at 3 (1986) (open records request applies to information in existence when request is received); 362 at 2 (1983) (governmental entity does not have to supply information which does not exist). Thus, we need not address the request to the extent it seeks information that does not exist but we will consider your arguments against releasing the document which the district created in response to the request.

The district received the request on April 26, 1999 and then sought a decision from this office on May 11, 1999. It appears that the district's request for a decision was not timely made under section 552.301 of the Government Code. When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested

information is presumed to be public. *See* Gov't Code § 552.302. However, this presumption of openness can be overcome by a compelling demonstration that the information should not be made public. Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). On this basis, we will address your arguments that sections 552.101, 552.110, and 552.117 protect the submitted information from disclosure.¹

Credit Card Statements

The requestor seeks the district's VISA credit card statements dating from 1995. You submitted samples of those statements to this office for review.² You contend that sections 552.101 and 552.110 of the Government Code protect the statements from disclosure. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute and information protected by common-law or constitutional privacy. Section 552.110 provides an exception for "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." Both of these exceptions are mandatory when applicable, but you have not shown the applicability of either of these provisions to the district's VISA statements.³

You contend that some of the statements contain information that is made confidential under sections 552.024 and 552.117 of the Government Code. Sections 552.024 and 552.117 provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, or information that reveals that the individual has family members. Although none of the sample statements contain such

¹You also assert section 552.112 of the Government Code, which is clearly inapplicable to the district because the exception protects from disclosure examination, operating or condition reports prepared by or for an agency responsible for regulating or supervising financial institutions or securities. The district is not such an agency.

²We 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). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

³You are particularly concerned about releasing the account number. We note that an individual's credit card number could be excepted from disclosure on the basis of that individual's common-law privacy interests, but a governmental body has no common-law privacy interest to protect. Open Records Decision No. 192 at 4 (1978) (right of privacy protects feelings of human beings, not property, business or other monetary interests), *see* Open Records Decision No. 373 at 3 (1983) (privacy interest in financial information relating to individual).

information, we agree that you must withhold this information if, as of the time of the request for the information, the employee had elected to keep the information private. Open Records Decision Nos. 530 at 5 (1989), 482 at 4 (1987), 455 (1987).

Employment Information

The requestor asked for the “places of employment, full and part-time” since 1995 for the district’s trustees. You submitted a list that shows the employment of each trustee, but contend that the information is confidential under section 552.101 of the Government Code. The test to determine whether information is private and excepted from disclosure under common-law privacy is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977).

The type of information the supreme court considered intimate and embarrassing in *Industrial Foundation* included information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. In Open Records Decision No. 262 (1980), this office stated that information about a patient’s injury or illness might be protected under common-law privacy if such injury or illness relates to drug overdoses, acute alcohol intoxication, gynecological or obstetrical illnesses, convulsions and seizures, or emotional and mental distress. *See also* Open Records Decision No. 539 at 5 (1990) (information concerning emotional state may be protected by common-law privacy). None of the information on the submitted list is protected from disclosure by common-law privacy.

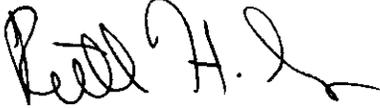
The Contract

The request asks for a copy of the “entire contract between Dalmac Construction and Navarro ISD, including Dalmac’s payee list to subcontractors and vendors for work on the new bond projects.” We assume that you have provided the contract to the requestor, as you raise no objections to disclosure of the Dalmac contract. You state that Dalmac’s payee list is not a record of the district.

Section 552.002 provides that information is subject to the Public Information Act if it is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business either (1) by a governmental body or (2) for a governmental body when the governmental body owns the information or has a right of access to it. Even if the district does not have a copy of the payee list or does not own the information, if such a list was made in connection under law, ordinance, or in connection with official business and the district has a right of access to it, you must disclose the list to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy". The signature is fluid and cursive, with the first name "Ruth" being the most prominent.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 126199

Encl. Submitted documents

cc: Mr. John Linney
134 Maderas
Seguin, Texas 78155
(w/o enclosures)