



March 15, 2000

Mr. Harold Besson
Superintendent
Navarro Independent School District
P.O. Drawer 10
Geronimo, Texas 78115

OR2000-1029

Dear Mr. Besson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135086.

The Navarro Independent School District (the “district”) received a request for “any and all requests made since March 1, 1997” for copies of any minutes or records of any proceedings of the Board of Trustees (the “board”) of the district. You indicate the district has two such requests, both made by members of the board.¹ You inquire whether the requests are excepted from public disclosure under section 552.109 of the Government Code. We have considered the information you have submitted and the exception you assert.

Section 552.109 protects private correspondence and communications of elected office-holders when release of the information “would constitute an invasion of privacy.” *See*

¹You have not submitted to this office for our review copies of the requests from the board members, or any information that is responsive to the request for information. *See* Gov’t Code § 552.301(e)(1)(D) (a governmental body is required to submit to this office, *inter alia*, a copy of the specific information requested, or representative samples of the information if a voluminous amount was requested). *See also* Gov’t Code § 552.302 (a governmental body’s failure to comply with the requirements of section 552.301 results in the presumption that the requested information must be released, unless there is a compelling reason to withhold the information). The presumption of openness can be overcome only by a compelling demonstration that the information must not be released, *e.g.*, where it is made confidential by other law or where third party interests are at issue. Open Record Decision No. 150 (1977).

Gov't Code § 552.109. In determining whether information is excepted from disclosure by section 552.109, this office relies on the same common law privacy test applicable under sections 552.101 and 552.102 of the Government Code. See Open Records Decision Nos. 506 (1988), 241 (1980), 212 (1978); see also Open Records Decision No. 40 (1974) (providing that section 552.109 may protect the content of the information, but not the fact of the communication). Section 552.101 encompasses common law privacy, and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). You state that the board members were "acting under their authority as [board] members" in making the requests that are responsive to the public information request at issue. We believe there is a legitimate public interest in how public officials conduct official business. Open Records Decision Nos. 518 at 4 (1989), 506 at 4 (1988). Based on the information you have provided, we therefore do not believe that the board member requests are protected by a right of privacy. We therefore conclude that the records are not protected from disclosure by section 552.109. You must release the information to the requestor.²

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

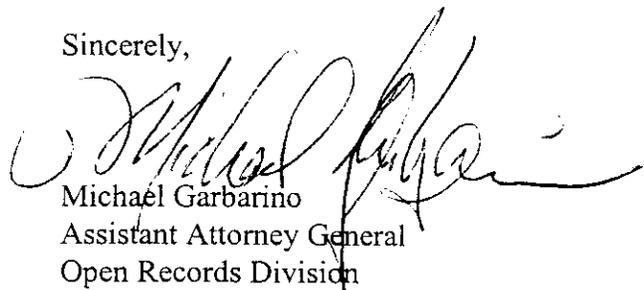
²Because you have not submitted the responsive documents, we are unable to ascertain whether they contain information that is confidential by law or that implicates the interests of a third party. We caution that the release of confidential information constitutes a criminal offense. See Gov't Code § 552.352.

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ch

Ref: ID# 135086

cc: Ms. Bridget Alexander
10373 N. Highway 123
Seguin, Texas 78155