



December 7, 2001

Mr. Jack Singley
Superintendent
Irving I.S.D.
P.O. Box 152637
Irving, Texas 75015-2637

OR2001-5724

Dear Mr. Singley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155852.

The Irving Independent School District (the "district") received a request for a complete copy of the personnel file of a named district employee. You inform us that you have released the requested information to the requestor with certain information redacted. You raise no exceptions to disclosure, but note that the employee has requested that her home address and telephone number not be released to the public. You also state that it is your understanding that employee numbers, social security numbers, and birth dates may also be protected "if desired by the employee." We have considered your assertions and reviewed the submitted information. We have also considered the comments submitted to this office by the named employee who expressed her desire that her address, telephone number, social security number, employee number and birth date not be released to the requestor. *See Gov't Code § 552.304.*

First, we note that subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You inform us that the district received the request for information on or about October 30, 2000. You did not request a decision from this office until October 2, 2001. Consequently, you failed to request a decision within the ten business-day period mandated by section 552.301(a) of the Government Code. Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). In this case, you indicate that information pertaining to the named employee's home address and telephone number was withheld from the information released to the requestor. This information is made confidential in some cases under section 552.117 of the Government Code. Therefore, as section 552.117 constitutes a compelling reason to overcome the presumption of openness, we will consider the application of that exception to the submitted information.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the school district must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The school district may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

In this case, you have submitted for our review an election form signed by the named employee dated August 7, 2000, in which the employee elected not to provide public access to her home address and telephone number. Therefore, as the election was made prior to the date of the records request, we conclude that the district must withhold, under section 552.117, the employee's home address and telephone number from the submitted information. However, as no election was made to withhold the employee's social security number or family member information, this information may not be withheld under section 552.117. A social security number, however, is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is

maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Thus, prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

With regard to the employee's birth date and employee number, we note that section 552.117 does not provide for the withholding of this information. Furthermore, neither an employee number nor a birth date are confidential. *See* Open Records Decision No. 455 (1987). Therefore, neither the employee's birth date nor her employee number may be withheld from the requested information and must be released to the requestor.

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; 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

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 A. Pearle
Assistant Attorney General
Open Records Division

MAP/sdk

Ref: ID# 155852

Enc: Submitted documents

c: Mr. Paul Jordan
P.O. Box 154248
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(w/o enclosures)