



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 5, 2002

Mr. Therold I. Farmer
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P.O. Box 2156
Austin, Texas 78768

OR2002-6914

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173166.

The Navasota Independent School District (the "district") received a request for certain minutes of district board meetings and information distributed during these meetings. You claim that some of the requested information is subject to a previous determination of this office, Open Records Letter No. 2002-1877 (2002). You claim that the remainder of the requested information may implicate the privacy rights of a third party. We have considered your claims and reviewed the submitted information.

Initially, we address a procedural question raised by the district, namely whether the present request is a valid information request under the Public Information Act (the "Act") when the requestor seeks copies of information but does not specify a mailing address. As a hyper-technical reading of the Act does not effectuate its purpose, a written communication that reasonably can be judged to be a request for public information constitutes a request for information under the Act. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974). In this regard, we note that a request for information need not refer to the Act or be addressed to the officer for public information. *Id.* Additionally, a request for information need not specify a return address. *See* Gov't Code § 552.301. Thus, as we find the present request to be a valid information request under the Act, we turn now to the district's arguments for the submitted information.¹

¹As the requestor may pick up copies of the responsive information from the district's office, we disagree that the lack of the requestor's mailing address makes impossible the district's compliance with this request for copies.

You represent that the requested information that you have submitted as Attachment C was at issue in a previous ruling from this office, Open Records Letter No. 2002-1877 (2002). In this ruling, this office determined that the district must withhold certain information from disclosure under section 552.110(b) of the Government Code. You further represent that the information in Attachment C is the precise information this office determined to be excepted from disclosure under section 552.110(b) in Open Records Letter No. 2002-1877 (2002). Thus, assuming the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the district must withhold Attachment C from disclosure in accordance with Open Records Letter No. 2002-1877 (2002).²

The remaining information submitted as Attachment D is subject to section 552.022(a)(18). As such, the information is public unless it is made confidential by other law. You claim that the release of Attachment D may implicate a third party's privacy interests. Section 552.305, which you reference, is not an exception to the disclosure of information under the Act. Rather, section 552.305 permits a governmental body to rely on an interested third party to raise and explain the applicability of exceptions in the Act in certain circumstances. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990). This office has not received any communication from an interested third party. However, section 552.101 of the Government Code, which excepts from disclosure information made confidential by law, encompasses the doctrines of common-law and constitutional privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information 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. 540 S.W.2d at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type

²The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

After carefully reviewing the remainder of the submitted information, we find that it is not the type of information protected by either common-law or constitutional privacy. Thus, you must release the remainder of the submitted information to the requestor.

In summary, assuming the four criteria for a previous determination have been met, the district must withhold Attachment C from disclosure in accordance with Open Records Letter No. 2002-1877 (2002). The remaining information 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/sdk

Ref: ID# 173166

Enc: Submitted documents

c: Mr. Steven Kahla
c/o Therold I. Farmer
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