



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

April 8, 2003

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2003-2348

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179168.

The Lancaster Independent School District (the "district"), which you represent, received a request for copies of various items of information associated with several of the district's Police Department employees. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, we must address the district's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not submit comments stating the reasons why the exceptions you have raised would allow the requested information to be withheld.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information

is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Sections 552.101, 552.117, and 552.130 of the Government Code provide compelling reasons to overcome the presumption of openness. *See* 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). Therefore, we will address those asserted exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The submitted W-2 forms are tax return information and therefore must be withheld from disclosure under section 552.101 of the Government Code as information deemed confidential by federal statute.

Section 552.117(2) of the Government Code excepts from public disclosure information that reveals a peace officer's home address, home telephone number, social security number, and whether the officer has family members. "Peace officer" is defined by article 2.12 of the Code of Criminal Procedure. The district must withhold the home addresses, home telephone numbers, and social security numbers, which you have marked and which we have marked, under section 552.117(2).

We note that you have also marked email addresses which you claim are excepted from disclosure under section 552.117 of the Government Code. Email addresses are governed by section 552.137 of the Government Code. Section 552.137 provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." Unless the owner of this e-mail address has affirmatively consented to its release, the district must withhold the marked e-mail address in accordance with section 552.137. *See* Gov't Code § 552.137(b). We note, however, that section 552.137 does not apply to a business' general e-mail address or website address. The emails you have marked are government email addresses, and are therefore not excepted under section 552.137. Accordingly, the district may not withhold any of the email addresses which you have marked.

Finally, we address your claim under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. The district must withhold the information which you have marked in the submitted documents pursuant to section 552.130.

To summarize, we conclude that: (1) the district must withhold the submitted W-2 forms in their entirety under section 552.101 of the Government Code; (2) the district must withhold the home addresses, home telephone numbers, and social security numbers, which have been marked, under section 552.117(2) of the Government Code; and (3) the district must withhold the Texas driver's license numbers under section 552.130 of the Government Code. All other information must be released.

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 Dep't of Pub. 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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 179168

Enc. Submitted documents

c: Mr. Kenneth Watts
115 Faircrest Drive
DeSoto, Texas 75115
(w/o enclosures)