



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 4, 2003

Mr. John A. Kazen  
Kazen, Meurer & Perez, L. L. P.  
P.O. Box 6237  
Laredo, Texas 78040

OR2003-3826

Dear Mr. Kazen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182170.

The Laredo Independent School District, (the "district"), which you represent, received a request for the "the internal audit of the fire extinguisher contract." You state that the privacy interests of third parties may be implicated by the release of the requested information and you have notified these third parties as permitted by section 552.305 of the Government Code.<sup>1</sup> We also understand you to claim that the requested information is excepted from disclosure under sections 552.101 and 552.125 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted documents are subject to section 552.022 of the Government Code. Section 552.022 provides, in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

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<sup>1</sup>As of the date of this ruling, the notified third parties have not submitted to this office any reasons explaining why their information should not be released.

Gov't Code § 552.022(a)(1). The information at issue, "Internal Auditor's Report of the Laredo Independent School District Fire Extinguisher Maintenance, September 1998 - February 2002," is a completed report. Thus, the district must release the requested information, unless the information is expressly confidential under other law or is excepted from disclosure by section 552.108. *See id.* § 552.022(a)(1). You do not raise section 552.108. You do, however, indicate that the report is excepted from disclosure under sections 552.101 and 552.125 of the Government Code.

Section 552.125 of the Government Code excepts from disclosure "[a]ny documents or information privileged under the Texas Environmental, Health, and Safety Audit Privilege Act" (the "Act"). The stated purpose of the Act, article 4447cc of Vernon's Texas Civil Statutes, "is to encourage voluntary compliance with environmental and occupational health and safety laws." V.T.C.S. art. 4447cc, § 2. In furtherance of its stated purpose, the Act provides that environmental or health and safety audits voluntarily performed by or for the owner or operator of a facility that is regulated under an environmental or health and safety law are privileged. V.T.C.S. art. 4447cc, §§ 3, 5, 6. Section 5 of the Act provides in part:

(a) An audit report is privileged as provided in this section.

(b) Except as provided in Sections 6, 7, and 8 of this Act, any part of an audit report is privileged and is not admissible as evidence or subject to discovery.

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V.T.C.S. art. 4447cc, § 5.

The Texas Supreme Court has determined that the discovery privileges found in the Texas Rules of Civil Procedure and the Texas Rules of Evidence "are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). However, article 4447cc of Vernon's Texas Civil Statutes is not such a privilege. Thus, we determine that article 4447cc, as incorporated into the Public Information Act by section 552.125, is not "other law" under which information is made confidential, and therefore, the audit report at issue may not be withheld from disclosure pursuant to article 4447cc of Vernon's Texas Civil Statutes and section 552.125 of the Government Code.

Section 552.101, on the other hand, excepts information made confidential by law, and therefore can except from disclosure information subject to section 552.022. Section 552.101 encompasses the doctrine of common-law privacy. 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. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). 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.

Upon review, we note that the information you marked in the submitted documents relates solely to the work behavior of public employees. We further note that there is a legitimate public interest in the work behavior of public employees and the conditions for their continued employment. *See* Open Records Decision No. 438 (1986) (work behavior of a public employee and the conditions for the employee's continued employment are matters of legitimate public interest not protected by the common-law right of privacy); *see also* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in having access to information concerning job performance of governmental employees), 423 at 2 (1984) (scope of public employee privacy is narrow). After reviewing your arguments and the submitted information, we conclude that you may not withhold any of the information you marked from disclosure under section 552.101 and common-law privacy. The requested information must be released in its entirety.

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,



Heather Pendleton Ross  
Assistant Attorney General  
Open Records Division

HPR/sdk

Ref: ID# 182170

Enc: Submitted documents

c: Ms. Tricia Cortez  
The Laredo Morning Times  
111 Esperanza Drive  
Laredo, Texas 78041  
(w/o enclosures)