



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

July 1, 2003

Mr. Robert A. Schulman
Feldman & Rogers, L.L.P.
517 Soledad Street
San Antonio, Texas 78205

OR2003-4485

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183543.

The San Felipe Del Rio Consolidated Independent School District (the "district"), which you represent, received a request for a variety of information pertaining to all current and retired district employees. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.117 and 552.1175 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that portions of the requested information are excepted from disclosure pursuant to section 552.117(2) of the Government Code. Section 552.117(2) excepts from disclosure a peace officer's home address, home telephone number, social security number, and information indicating whether the peace officer has family members, regardless of whether the peace officer made an election under section 552.024 of the Government Code. *See* Gov't Code § 552.117(2). Section 552.117(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. You state that portions of the requested information pertain to district employees who are peace officers. Accordingly, we conclude that the district must withhold the home addresses and home telephone numbers of these officers pursuant to section 552.117(2) of the Government Code. *See* Open Records

¹ We note that the portions of the requested information that are at issue here have been redacted from the documents that have been forwarded to us for review. Although in this instance we can determine the extent to which this fungible information may be excepted from disclosure, we advise the district in the future not to redact information that it seeks to protect from disclosure and for which it seeks a ruling from this office. *See* Gov't Code §§ 552.301, .302.

Decision No. 670 at 5-6 (2001) (governmental body "may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies").

You claim that portions of the requested information are excepted from disclosure pursuant to section 552.1175 of the Government Code. Section 552.1175 provides in pertinent part:

(a) This section applies only to:

...

(4) commissioned security officers as defined by Section 1702.002, Occupations Code.

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a), (b). You state that portions of the requested information pertain to district employees who are commissioned security officers. Accordingly, we conclude that the district must withhold the home addresses and home telephone numbers of these officers pursuant to section 552.1175, to the extent that the officers with whom this information is associated elect confidentiality for this information with the district under section 552.1175 of the Government Code.

You also claim that portions of the requested information pertaining to other current or retired district employees are excepted from disclosure pursuant to section 552.117 of the Government Code. We note that section 552.117(1) 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 timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request

confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Accordingly, we conclude that the district must withhold the home addresses and home telephone numbers of other current and retired district employees pursuant to section 552.117(1) of the Government Code to the extent that each employee timely elected confidentiality for this information under section 552.024 prior to the district's receipt of this request.

In summary, the district must withhold the home addresses and home telephone numbers of peace officers contained in the requested information pursuant to section 552.117(2) of the Government Code. The district must withhold the home addresses and home telephone numbers of commissioned security officers contained in the requested information pursuant to section 552.1175, to the extent that the officers with whom this information is associated elect confidentiality for this information with the district under section 552.1175 of the Government Code. The district must withhold the home addresses and home telephone numbers of other current and retired district employees that are contained in the requested information pursuant to section 552.117(1) of the Government Code to the extent that each employee timely elected confidentiality for this information under section 552.024 prior to the district's receipt of this request. The district must release the remaining requested information 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

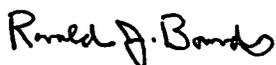
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 183543

Enc. Submitted documents

c: Ms. Kellie Guth
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Austin, Texas 78730
(w/o enclosures)