ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 22, 2004

Ms. Marquette Maresh
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2004-2151

Dear Ms. Maresh:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197942.

The Lockhart Independent School District (the "district"), which you represent, received a request for "a list of all individuals using the Club House facility by name and position in the [district]." You claim that the information is excepted from disclosure under sections 552.114, 552.117, 552.024, and 552.026 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.[1] We have also received and considered the requestor's comments. *See* Gov't Code § 552.304.

Initially, we note that some of the submitted information is not responsive to the request. In the requestor's comments to this office, the requestor states that the names of students using the facility are not included in the request. Thus, this decision is not applicable to the non-responsive information, and the district need not release these names.[2]

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[1] We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

[2] We do not address your sections 552.026 and 552.114 of the Government Code assertions because they relate to the non-responsive information. However, we note that in Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

We now address your claims to the responsive submitted information. Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who timely request that such 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). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the district's receipt of this request for information. The district may not withhold information under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely election under section 552.024 to keep the individual's section 552.117 information confidential.

You state that the Club House facility "provides daycare services to the children of both [district] students and employees." You further assert that "all of the employees who have children attending the Club House have timely chosen not to allow public access to information. . . in accordance with Texas Government Code § 552.024." Although section 552.117 is not generally applicable to the names of employees of a governmental body, you assert that the very nature of the requested information reveals in this instance whether or not a named district employee has family members. You also assert that because of the district's small size, revealing the employees' positions would enable the requestor to "fill in the blanks" to determine the identities of the employees, which would consequently lead to the requestor knowing that an employee has family members. Based on your representations and upon review, we find that the district must withhold the responsive submitted information we have marked under section 552.117(a)(1) of the Government Code. The remaining 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,

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 197942

Enc. Submitted documents

c: Mr. John Manning
1011 Lovers Lane
Lockhart, Texas 78644
(w/o enclosures)