



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

March 23, 2004

Ms. Lisa D. Patterson  
State Board for Educator Certification  
4616 West Howard Lane, Suite 120  
Austin, Texas 78728

OR2004-2196

Dear Ms. Patterson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198003.

The State Board for Educator Certification (the "board") received a request for information concerning how board members voted on certain issues and appointments to the board made by George Bush and Rick Perry.<sup>1</sup> You claim that a portion of the requested information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the representative sample.<sup>2</sup>

Initially, we must address the board'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

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<sup>1</sup>We note that Exhibit B8 was created after the date the board received the instant request. Therefore, this document is not responsive to the request and need not be released. *See* Open Records Decision No. 452 at 3 (1986) (document not within purview of Public Information Act if it did not exist when governmental body received request for it).

<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

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 state that the board received the request for information on January 5, 2004. Thus, pursuant to section 552.301(e), you were required to submit arguments and the specific information at issue to this office no later than January 27, 2004. Although you certify that this information was faxed and placed in interagency mail on January 23, 2004, these required items were received by this office on January 28, 2004. The fax cover sheet and the time stamp on the fax transmission indicate that the fax was sent on January 28, 2004. Further, the board's brief is dated January 26, 2004. Based on these discrepancies, we conclude that the board failed to demonstrate that it submitted arguments and the specific information at issue within the fifteen day period mandated by section 552.301(e) of the Government Code. *See generally* Gov't Code § 552.308(b) (action by interagency mail considered timely if agency places material in interagency mail within specified time period and provides sufficient evidence to establish that material was deposited in interagency mail within that period).

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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). This office has held that a compelling reason exists to withhold information when the information affects third party interests. *See* Open Records Decision No. 150 (1977). You claim that the information at issue is excepted from disclosure under section 552.117 of the Government Code. Section 552.117 can provide a compelling reason to withhold information. Therefore, we will address your arguments against disclosure under this section.

Section 552.117 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 request that this information be kept confidential under section 552.024. We note that a post office box number is not a "home address" for purposes of section 552.117 and therefore may not be withheld under this section. *See* Gov't. Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added); *see also* Open Records Decision Nos. 658 at 4 (1998) (statutory confidentiality provision must be express and cannot be implied), 478 at 2 (1987) (language of confidentiality statute controls scope of protection), 465 at 4-5 (1987) (statute explicitly

required confidentiality). 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). Therefore, the board may only withhold information under section 552.117 on behalf of current or former officials who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The board may not withhold this information under section 552.117 for those officials who did not make a timely election to keep their information confidential. Accordingly, for those officials that timely elected to keep their personal information confidential, the board must withhold their home addresses and telephone numbers under section 552.117 of the Government Code. The board may not withhold this information under section 552.117 for those officials who did not make a timely election to keep the information confidential. The remaining information at issue 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); *Tex. 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,



Melissa Vela-Martinez  
Assistant Attorney General  
Open Records Division

MVM/sdk

Ref: ID# 198003

Enc. Submitted documents

c: Mr. Tom Purcell  
P.O. Box 2056  
Roanoke, Texas 76262  
(w/o enclosures)