



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

August 20, 2004

Mr. Frank Hill  
Hill Gilstrap  
Attorneys at Law  
1400 West Abram Street  
Arlington, Texas 76013

OR2004-7128

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 207721.

The Carroll Independent School District (the "district"), which you represent, received a request for "any documents, reports, notes, documents [sic], research, letters and complaints that relate to the district's forensic audit." You claim that the requested information, or portions thereof, is excepted from disclosure under sections 552.103, 552.107 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Subsections 552.301(a) and (b) provide:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

You state that the district received the request for information on May 28, 2004. Although your letter requesting a decision from this office is dated June, 14, 2005, the postage on the envelope in which we received your request for a decision indicates that the postage was paid in Arlington, Texas on June 15, 2004. No post office cancellation date appears on the envelope. Consequently, we find that the district has not furnished satisfactory proof that the request was deposited in the mail within the ten business day time period for requesting a decision mandated by section 552.301(a) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of 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). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994).

You assert that the requested information, or portions thereof, is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. These exceptions are discretionary in nature; they serve only to protect a governmental body's interests and may be waived. As such, they do not generally constitute compelling reasons to withhold information. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Further, rule 503 of the Texas Rules of Evidence does not constitute a compelling reason to overcome the presumption under section 552.302. *See* Open Records Decision No. 676 at 11 (2002) (assertion of rule 503 does not demonstrate "compelling reason" under section 552.302 to prohibit governmental body's release of information). However, because section 552.117 of the Government Code can constitute a compelling reason to withhold information, we will address its applicability to the submitted information. *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).

Regarding the applicability of section 552.117 of the Government Code to portions of the submitted information, you state and we note that social security numbers have been redacted

from the submitted documents. You do not assert, nor has our review of our records indicated, that you have been granted a previous determination to withhold any such information without seeking a ruling from this office. *But see* Open Records Decision No. 670 at 5-6 (2001) (all governmental bodies encompassed by Gov't Code ch. 552 may withhold social security numbers of peace officers without necessity of requesting decision under Gov't Code § 552.301 as to whether Gov't Code § 552.117(a)(2) applies). Because we can discern the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling *in this instance*. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested").

Section 552.117(a)(1) excepts from public disclosure the home addresses and telephone numbers, social security numbers, and family member information of a current or former civilian official or employee of a governmental body who timely and specifically requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district must withhold the social security number of a current or former civilian official or employee of the district who requested confidentiality for his or her social security number under section 552.024 prior to the date on which the district received this request for information. The district may not withhold a social security number under section 552.117(a)(1) on behalf of a current or former civilian official or employee of the district who did not make a timely election under section 552.024 to keep that information confidential. In addition to the social security numbers that you have redacted, we have marked a small amount of additional information in Exhibits B-3 and B-10 that is also subject to section 552.117(a)(1) and that must be withheld if the current or former employees whose information is at issue timely elected to keep this information confidential.

Notwithstanding the current or former employees' election to keep their personal information confidential, social security numbers may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution,

however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, for those current or former employees who timely elected to keep their personal information confidential, the district must withhold the redacted social security numbers, as well as the information we have marked, pursuant to section 552.117(a)(1). Notwithstanding the current or former employees' election to keep their personal information confidential, the social security numbers may be confidential under federal law. All remaining information must be released 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).

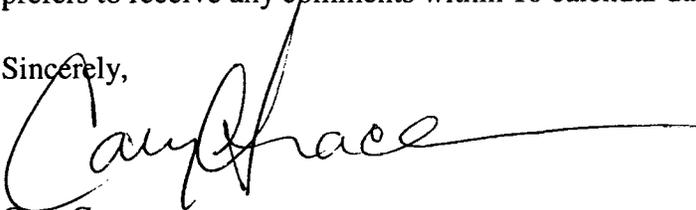
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal line extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 207721

Enc. Submitted documents

c: Mr. Terry Webster  
Fort Worth Star-Telegram  
c/o Frank Hill  
Hill Gilstrap  
1400 West Abram Street  
Arlington, Texas 76013  
(w/o enclosures)