



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 1, 2004

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

OR2004-8342

Dear Ms. Maresh:

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# 210147.

The Lockhart Independent School District (the "district"), which you represent, received a request for information related to the Cub House day care facility. You state that some responsive information has been provided to the requestor. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first address the procedural requirements of section 552.301 of the Government Code. You acknowledge, and we agree, that the district failed to seek an open records decision from this office within the statutory ten-day period. *See* Gov't Code § 552.301(b). In addition, you failed to submit, within fifteen business days, the district's written comments explaining why its claimed exceptions apply and the requested records. *See* Gov't Code § 552.301(e)(1)(A), (D). The district's delay in this matter results in the presumption that the requested information is public. *See* Gov't Code § 552.302; *see also* *Hancock v. State*

¹While you also raise section 552.024, we note that section 552.024 is not itself an exception to disclosure, but rather a provision of the Act that requires a governmental body to permit officials and employees to elect to keep certain personal information confidential. For employees who timely elect to keep such information confidential, the information may be excepted from disclosure under section 552.117(a)(1) of the Government Code. *See* Gov't Code §§ 552.024, .117.

Bd. of Ins., 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The district must demonstrate a compelling interest in order to overcome the presumption that the requested information is now public. Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or third-party interests are at stake. See Open Records Decision No. 150 at 2 (1977). Because the applicability of sections 552.101 and 552.117 can provide compelling reasons to withhold information from disclosure, we will address your arguments.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses information that is confidential under other law. You have not directed our attention to any other law, nor are we aware of any law, under which the information in question is considered to be confidential. See, e.g., Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). We therefore conclude that the district may not withhold any portion of the submitted information under section 552.101 of the Government Code.

You also contend that some of the same information must be withheld under section 552.117 of the Government Code. Section 552.117(a)(1) 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 Cub House facility “provides daycare services to . . . the children of [district] students [and] employees.” You further assert that “[m]ost of the employees who have children attending the Cub House or pre-kindergarten timely chose 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 certain 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. According to the

documentation you provide, the employees to whom the records we have marked pertain requested to keep their family member information confidential pursuant to section 552.024 prior to the date of the district's receipt of the request for information. Thus, the district must withhold the 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 210147
Enc. Submitted documents

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