



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 17, 2004

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

OR2004-10719

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# 216033.

The Lockhart Independent School District (the "district"), which you represent, received a request for 1) the district policy concerning student expulsion; 2) the first pages of police reports for a specified period; 3) Superintendent John Hall's expense reports for a specified time; and 4) e-mails sent or received by the superintendent for a specified time. The district has released most of the information but asserts some of the information responsive to item four is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. We have reviewed the district's arguments and the submitted information.

Section 552.002 provides that "public information" means information that is collected or maintained by a governmental body in connection with the transaction of official business. The district states that Exhibit 3 is not related to school business. We have reviewed Exhibit 3 and agree that it is not information maintained in connection with the transaction of official business. Thus, Exhibit 3 is not public information subject to the Act, and the district need not release the information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy

protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. The home and cellular telephone numbers of private citizens contained in Exhibit 5 are not private because they are not highly intimate or embarrassing. Open Records Decision Nos. 554 at 3 (1990), 475 at 2 (1987). Thus, the district may not withhold the home and cellular telephone numbers of private citizens contained in Exhibit 5 under common-law privacy.

The district also argues that release of the home and cellular telephone numbers of private citizens is not consistent with the purpose of section 552.137 of the Government Code. Section 552.137 of the Government Code provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. Home and cellular telephone numbers are not protected under section 552.137. Thus, the district may not withhold the home and cellular telephone numbers of private citizens under section 552.137.

Section 552.117(a)(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 request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the school district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The district has submitted the election forms of the employee and official whose personal information is at issue. The election forms show that these individuals timely elected to restrict access to their personal information. Thus, the district must withhold the information it highlighted in Exhibit 4 and that we marked in Exhibit 6 under section 552.117(a)(1).

In summary, the district must withhold the information it highlighted in Exhibit 4 and that we marked in Exhibit 6 under section 552.117(a)(1). The district must release the remainder.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 216033

Enc: Submitted documents

c: Ms. Amy Johnston
KVUE News
3201 Steck Avenue
Austin, Texas 78757
(w/o enclosures)