



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 25, 2005

Ms. Beverly West Stephens  
Gale, Wilson & Sánchez, L.L.C.  
115 East Travis, Suite 618  
San Antonio, Texas 78205

OR2005-00721

Dear Ms. Sánchez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 217402.

The San Antonio Independent School District (the "district"), which you represent, received a request for the following information:

1. A copy of the grievances of Delia Perez, Joe Quiroga and Rita Sanchez, heard by [the district] Board of Trustees on June 16, 2004 and July 27, 2004 and supporting documentation and all District responses, including a copy of the settlement(s) by the Board of Trustees.
2. A copy of the status and/or investigative report(s) requested by the Board of Trustees regarding Delia Perez, Joe Quiroga and Rita Sanchez.

You state that the district does not have any information reflecting any settlements by the district board of trustees. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.111, and 552.135 of the Government Code. We have considered the exceptions you

claim and reviewed the submitted information.<sup>1</sup> We have also considered comments submitted by counsel for the requestor. *See* Gov't Code § 552.304 (providing that member of public may submit comments stating why information should or should not be released).

First, you advise that the present request encompasses tape recordings of the Level III grievance hearings held in executive session before the district's board of trustees. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. You seek to withhold the tape recordings under section 552.101 in conjunction with section 551.104 of the Government Code. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). Such information cannot be released to a member of the public in response to an open records request.<sup>2</sup> *See* Open Records Decision No. 495 (1988). We agree that tape recordings of an executive session of the district board of trustees must be withheld pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Next, you claim that the submitted information is excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) applies to information that is protected by the attorney-client privilege. *See* Gov't Code § 552.107(1); Open Records Decision No. 676 (2002). Section 552.107(2) excepts information that has been prohibited from disclosure by court order. *See* Gov't Code § 552.107(2). You do not argue that any portion of the submitted information is protected by the attorney-client privilege or has been prohibited from disclosure by court order. We therefore find that none of the submitted information is excepted from disclosure under section 552.107 of the Government Code. *See* Gov't Code § 552.301(e)(1), (4) (governmental body seeking to withhold information pursuant to exception to disclosure must provide comments explaining why claimed

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<sup>1</sup> We note that names of individuals have been redacted from some of the documents you have submitted for review. We advise that section 552.301 of the Government Code requires a governmental body to submit responsive information in a manner that permits this office to review the information. *See* Gov't Code § 552.301(e)(1)(D). Therefore, the district risks non-compliance with section 552.301 if it fails to submit responsive information in non-redacted form. Such non-compliance can result in a conclusion from this office that the information at issue must be released. *See* Gov't Code §§ 552.006, .301, .302. With respect to future requests for an open records decision, therefore, we advise the district to submit responsive documents in non-redacted form. *See id.* § 552.3035 (attorney general may not disclose to requestor or public any information submitted to attorney general under section 552.301(e)(1)(D)).

<sup>2</sup> As you acknowledge, the district is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

exceptions apply to the information, and label information to indicate which exceptions apply to which portions of the information).

You also contend that the submitted information is excepted from disclosure pursuant to section 552.102 and is protected by common-law privacy. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Accordingly, we will consider your section 552.102 claim and your claim under common-law privacy together.

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. See *id.* 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. *Id.* at 683. Prior decisions of this office have determined that personal financial information not related to a transaction between an individual and a governmental body is generally not subject to a legitimate public interest and is therefore protected by common-law privacy. See Open Records Decision No. 600 (1992). However, this office has also determined that the essential facts about a financial transaction between an individual and a governmental body generally are subject to a legitimate public interest. See Open Decision Nos. 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 523 (1989). Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. See Open Records Decision No. 373 (1983).

We have marked a small amount of personal financial information in the submitted documents that is protected by common-law privacy and must be withheld under section 552.101. However, while you contend that the remaining information consists of "information in a personnel file," we note that the information is not highly intimate or embarrassing. Furthermore, the information relates to complaints of alleged discrimination against district employees and, as such, is subject to a legitimate public interest. See Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance of public employees), 329 at 2 (1982) (information relating to complaints involving public employees not protected under former section 552.101

or 552.102). Thus, with the exception of the personal financial information we have marked, we determine the district may not withhold any portion of the submitted information pursuant to section 552.102 or section 552.101 in conjunction with common-law privacy.

You also contend that the submitted information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure “an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.” In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). The preliminary draft of a policymaking document that has been released or is intended for release in final form is excepted from disclosure in its entirety under section 552.111 because such a draft necessarily represents the advice, recommendations, or opinions of the drafter as to the form and content of the final document. Open Records Decision No. 559 at 2 (1990). An agency’s policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993).

As noted, the submitted documents relate to the district’s investigation of a specific employee grievance. You also state that the information relates to administrative and personnel matters concerning the pay scale of district custodial staff. We find that the administrative and personnel matters at issue are not broad in scope and do not bear on the overall policy mission of the district. *Cf.* Open Records Decision No. 631 (1995) (finding that report on university faculty hiring and retention concerned administrative and personnel matter of broad scope and impact on university’s policy mission sufficient to come within scope of section 552.111). We therefore determine that the submitted information relates solely to internal personnel matters of the district and does not reflect the policymaking processes of the district. Accordingly, we find the information is not excepted under section 552.111 of the Government Code and may not be withheld from disclosure on that basis.

Next, you contend that the submitted documents include names of individuals that are excepted from disclosure pursuant to section 552.135 of the Government Code. Section 552.135 provides in pertinent part:

- (a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure.

Gov't Code § 552.135(a), (b). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under section 552.135 must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). After reviewing your comments and the submitted information, we find you have not established that any section 552.135 is applicable to the submitted information. Accordingly, we determine that the district may not withhold the identities of any district employees from disclosure under section 552.135 of the Government Code.

You indicate that the submitted documents may contain information that is excepted from disclosure under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) of the Government Code 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 timely elect to keep this information confidential pursuant to 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 received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who elected to keep information confidential pursuant to section 552.024 prior to the date on which the request for this information was made. You do not inform us whether the employee whose information appears in the submitted documents elected to keep such information confidential pursuant to section 552.024 prior to the date the district received the present request. Thus, in the event the employee at issue timely elected to keep the information confidential, we have marked information that the district must withhold under section 552.117(a)(1) of the Government Code. If, however, the employee did not make a timely election, the district may not withhold this information under section 552.117(a)(1).

We note that the employee's social security number may nevertheless be excepted from disclosure pursuant to section 552.101 of the Government Code. Citing Open Records Decision No. 169 (1977), you appear to contend that the social security number is confidential by law. We emphasize that Open Records Decision No. 169 expressly found that social security numbers are not confidential. *See* Open Records Decision No. 169 at 6 (expressly finding that social security numbers are not excepted under statutory predecessors to sections 552.101 or 552.102). This office has subsequently found that a social security number may be excepted from disclosure in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, section 405(c)(2)(C)(viii)(I) of title 42 of the United States Code. *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and

related records that are obtained or 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 the social security number at issue here is 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 Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the district 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.

We note that the submitted documents contain bank account number information that is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The district must withhold the account number information that we have marked pursuant to section 552.136 of the Government Code.

In summary, tape recordings of an executive session of the district board of trustees must be withheld under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. We have marked a small amount of personal financial information in the submitted documents that the district must withhold pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. Provided the district employee at issue timely elected to keep the information confidential, the district must withhold the information we have marked in the submitted documents pursuant to section 552.117(a)(1) of the Government Code. Otherwise, the information may not be withheld under section 552.117(a)(1). The employee's social security number may nevertheless be excepted under section 552.101 in conjunction with federal law. We have marked bank account number information that must be withheld pursuant to section 552.136

of the Government Code. The remainder of the submitted 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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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).

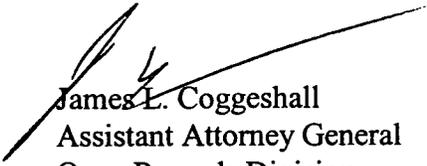
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 ten calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/DRS/seg

Ref: ID# 217402

Enc: Submitted documents

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