



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 21, 2005

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

OR2005-11515

Dear Ms. McGowan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 238771.

The Dallas Independent School District (the "district") received a request for twenty-seven categories of information. You claim that some of the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you only submitted information responsive to categories 3, 4, 5, 8, 15, 16, 18 and 27 for our review. You have not submitted information or representative samples of information responsive to the remaining categories for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to these categories existed on the date that the district received the instant request, we assume that the district has released it to the requestor. If the district has not released any such information, the district must release it to the requestor at this time. *See Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).*

The district claims that some of the submitted information is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or

prosecution of crime is excepted from required public disclosure “if release of the information would interfere with the detection, investigation, or prosecution of crime.” Gov’t Code § 552.108(a)(1). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides the attorney general with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information. You assert that the FBI objects to the release of the information because it relates to the FBI’s pending criminal investigation. We agree that release of the information at issue would interfere with the ongoing investigation. Therefore, the district may withhold this information from disclosure under section 552.108(a)(1).

You also claim that some of the submitted information is excepted from disclosure under sections 552.101 and 552.102. Section 552.102 of the Government Code 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*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of commonlaw privacy as incorporated by section 552.101. Accordingly, we will consider your section 552.101 and section 552.102 claims together.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” and encompasses the doctrine of common law right of privacy, which excepts from disclosure information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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.

In addition, this office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common law privacy. See Open Records Decision No. 600 (1992) (designation of beneficiary of employee’s retirement benefits and optional insurance coverage). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See, e.g., Open Record

Decision 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities). We have marked the information that is confidential under common law privacy and excepted from release under sections 552.101 and 552.102 on that ground.¹ None of the remaining information at issue is confidential under common law privacy.

You also claim that section 552.137 is applicable to some of the submitted e-mail addresses. Section 552.137 provides as follows:

(a) Except as otherwise provided by this section, 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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

¹As our ruling is dispositive for this information, we need not address your argument under section 552.136.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note that the e-mail addresses at issue may belong to employees of entities with which the district has contractual relationships. *See* Gov't Code § 552.137(c)(1). Because we are unable to discern whether the submitted e-mail addresses fall within the scope of section 552.137(c), we must rule conditionally. To the extent the submitted e-mail addresses belong to members of the public who have not affirmatively consented to their release, the district must withhold the e-mail addresses under section 552.137. However, to the extent the submitted e-mail addresses belong to employees of entities with which the district has contractual relationships, the e-mail addresses may not be withheld under section 552.137.

In summary, the district may withhold the information it has marked under section 552.108. The district must withhold the information we have marked under sections 552.101 and 552.102 in conjunction with common law privacy. To the extent the submitted e-mail addresses belong to members of the public who have not affirmatively consented to their release, the district must withhold the e-mail addresses under section 552.137. To the extent the submitted e-mail addresses belong to employees of entities with which the district has contractual relationships, the e-mail addresses may not be withheld under section 552.137. The remaining submitted information must be released to the requestor.

You request that this office issue a previous determination allowing the district to withhold credit card numbers and personal e-mail addresses. We decline to issue such a previous determination at this time. Accordingly, 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

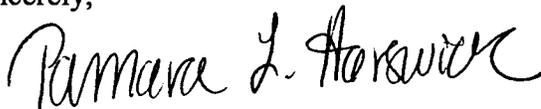
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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 Office of the Attorney General 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. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/segh

Ref: ID# 238771

Enc. Submitted documents

c: Mr. Shane Goetz
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(w/o enclosures)