



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 3, 2007

Ms. Jennifer L. Hall
Escamilla & Poneck, Inc.
100 Travis Park Plaza
711 Navarro Street
San Antonio, Texas 78205

OR2007-00050

Dear Ms. Hall:

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# 268113.

The San Antonio Independent School District (the "district") received a request for ten categories of information, six of which relate to the requestor's client and four of which relate to another named individual. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.117, 552.135, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information regarding the requestor's client for our review. As you have not submitted this requested information for our review, we assume you have released it to the extent that it existed at the time this request was received. If you have not released any such records, you must release them to the requestor at this time. See Gov't Code §§ 552.301(a), .302.; see also 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).

Next we address your claims under section 552.102 of the Government Code. Section 552.102 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 common law privacy as incorporated by section 552.101. Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). As the privacy test for sections 552.102 and 552.101 are identical, we will address the district's privacy claims under sections 552.102 and 552.101 together.

Generally only the information that either identifies or tends to identify a victim of sexual assault or other sex-related offense may be withheld under common law privacy. However, a governmental body is required to withhold an entire report when identifying information is inextricably intertwined with other releasable information or when the requestor knows the identity of the alleged victim. *See* Open Records Decisions Nos. 393 (1983), 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, *writ denied*) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have legitimate interest in such information); Open Records Decision No. 440 (1986) (detailed descriptions of serious sexual offenses must be withheld). In this instance, the requestor knows the identity of the alleged victim; thus, withholding only the identifying information from the requestor would not preserve the victim's common law right to privacy. We therefore conclude that the district must withhold Exhibit 2 in its entirety pursuant to the common law privacy principles incorporated by section 552.101.¹

Exhibit 3 contains the personnel file of a named individual. Generally, the public has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 at 5 (1990) (information in public employee's resume not protected by constitutional or common law privacy under statutory predecessors to section 552.101 and section 552.102). Therefore, based on our review of the information in Exhibit 3, we conclude that none of it is protected from disclosure under common law privacy. Thus, the district may not withhold any information in Exhibit 3 on this basis.

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. Gov't Code § 552.117(a)(1). 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). You inform us that the

¹As we reach this conclusion, we need not address your claim under section 552.135 of the Government Code.

employee at issue timely chose to withhold her information under section 552.024. Therefore, the district must withhold the personal information that we have marked in Exhibit 3 under section 552.117.

We note that Exhibit 3 also contains the email addresses of members of the public. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov’t Code § 552.137(a)-(c). The e-mail addresses we have marked in Exhibit 3 are not of a type specifically excluded by section 552.137(c). Therefore, the district must withhold the e-mail addresses we have marked in Exhibit 3 under section 552.137.

In summary, the district must withhold Exhibit 2 in its entirety pursuant to common law privacy and section 552.101. The district must withhold the personal information that we have marked in Exhibit 3 under section 552.117. The district must withhold the e-mail addresses we have marked in Exhibit 3 under section 552.137. The remaining information in Exhibit 3 must be released. As our ruling is dispositive, we need not address your remaining argument.

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,

A handwritten signature in black ink, appearing to read "J. Vela III". The signature is stylized and written in a cursive-like font.

José Vela III
Assistant Attorney General
Open Records Division

JV/eb

Ref: ID# 268113

Enc. Submitted documents

c: Mr. Daniel A. Ortiz
715 West Abrum
Arlington, Texas 76013
(w/o enclosures)