



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 17, 2008

Ms. Amanda M. Bigbee
Henslee Schwartz, LLP
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2007-00807

Dear Ms. Bigbee:

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# 300349.

The Alvord Independent School District (the "district"), which you represent, received a request for a list of all district employees, their positions and salaries for the years 2003 through 2007; the district budgets for the years 2003 through 2005; the job description of the superintendent; the jurisdiction of the district; the resignation letter of the PTO's treasurer; the email correspondence between two named individuals; the school board meeting minutes for August 25, 2007; and any and all information on file pertaining to the requestor. You state that most of the responsive information will be made available to the requestor. You claim that the submitted information is not public information subject to disclosure under the Act. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the submitted information is not public information subject to the Act. The Act applies only to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Id. § 552.002. Information is generally subject to chapter 552 when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. Open Records Decision No. 635 (1995). You inform us that the submitted information consists of a document dealing with Parent Teacher Organization (“PTO”) happenings. You state that the PTO is a separate entity from the district, and that the district does not generally maintain records of the PTO. However, you do not tell us that the information at issue is a record of the PTO that is not collected, assembled, or maintained by the district. Instead, we note that the submitted information pertains to a letter written by a district employee to a district faculty member and relates to the district. Therefore, we conclude that the submitted information is “public information” subject to disclosure under the Act, unless an exception to disclosure applies.

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).

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes 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. Upon review, we determine that the information you seek to withhold as private is not highly intimate or embarrassing. *See id.* at 683. Accordingly, we conclude that the submitted information may not be withheld under section 552.102.

Finally, you argue that the submitted information contains information subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, 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 of the Government

Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under 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 district may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employee whose information is at issue timely elected to keep her personal information confidential, the district must withhold the information we have marked under section 552.117(a)(1). The district may not withhold the information we have marked under section 552.117(a)(1) if the employee did not timely elect to keep her information confidential. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 300349

Enc. Submitted documents

c: Ms. Tracy Lodes
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(w/o enclosures)