



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 23, 2008

Ms. Amanda M. Bigbee
Henslee Schwarz, L.L.P.
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2008-01030

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# 300256.

The Lefors Independent School District (the "district"), which you represent, received a request for seven categories of information related to a named former district employee. You state that some of the requested information has been provided to the requestor. You also state that the district is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).¹ We note that you have redacted a social security number pursuant to section 552.147.² You claim that the submitted information is excepted from disclosure under sections 552.102 and 552.117 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102(b) of the Government Code provides that "[i]nformation is excepted from [public disclosure] if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not

¹We note that our office is prohibited from reviewing the education records to determine whether appropriate redactions under FERPA have been made; therefore, we will not address the applicability of FERPA to any of the submitted information.

²Section 552.147 authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

³Although you raise sections 552.101, 552.111, and 552.130 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the submitted information. Therefore, we presume you have withdrawn these exceptions. See Gov't Code §§ 552.301, .302.

exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.” Gov’t Code § 552.102(b). As the submitted documents do not include a transcript from an institution of higher education, the district may not withhold any of the submitted information under section 552.102(b).

Section 552.117(a)(1) of the Government Code 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 his personal information confidential, the district must withhold the information you have marked under section 552.117(a)(1). The district may not withhold the information you have marked under section 552.117(a)(1) if the employee did not timely elect to keep his information confidential.

In summary, if the employee whose information is at issue timely elected to keep his personal information confidential, the district must withhold the information you have marked under section 552.117(a)(1). As you raise no other arguments against disclosure for the remaining information, it must be released.

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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/eeg

Ref: ID# 300256

Enc. Submitted documents

c: Mr. Jamie Owen
P.O. Box 1356
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(w/o enclosures)