



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 15, 2008

Ms. Ellen H. Spalding
Feldman & Rogers
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2008-11161

Dear Ms. Spalding:

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# 319347.

The Klein Independent School District (the "district"), which you represent, received a request for information used in the analysis, recommendation, proposal, and promotion of the 2008 bond. You claim that the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address the district's procedural obligations under the Act. You state that the requestor made a request for information on May 14, 2008, for "information that the Superintendent and/or Board of Trustees used in relation to the analysis, recommendation, proposal, and promotion of the 2008 Bond[.]" You state that the district directed the requestor to the district's website where the requestor could find the responsive information. The district also offered to make copies of the information on the website. However, you state the requestor submitted a letter on May 28, 2008, stating that the district misinterpreted his first request and failed to provide all of the requested information. *See Gov't Code* § 552.301(b) (a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request). You claim that the district officials responsible for filling the original request "did not know that any context was set at that meeting that was contrary to what they believed he was asking for in his original request." Although you claim that the requestor's letter received on May 28

should be treated as a second request, we find that the documents at issue relate to information used in the analysis, recommendation, proposal, and promotion of the 2008 bond. Therefore, we conclude these documents are responsive to the prior request. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.107 and 552.111 of the Government Code, these are discretionary exceptions to public disclosure that protect the governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, we conclude that the district may not withhold any of the submitted information under sections 552.107 or 552.111 of the Government Code. However, section 552.137 of the Government Code can provide a compelling reason to withhold information. Therefore, we will address your claim under this exception.

Section 552.137 makes certain e-mail addresses confidential, providing the following:

- (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.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137 (b). The types of e-mail addresses listed in section 552.137 (c) may not be withheld under section 552.137. Likewise, this section is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. You have marked e-mail addresses under section 552.137. We have marked additional e-mail addresses under section 552.137. The district must generally withhold the marked personal e-mail addresses under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. However, to the extent that any of the personal e-mail addresses belong to employees of entities with which the district has contractual relationships, or fall under any of the other exceptions listed under subsection 552.137(c), the e-mail addresses may not be withheld under section 552.137.

We note that the submitted information may contain employees' personal information. Section 552.117 of the Government Code excepts from public disclosure the present and former 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 552.024.¹ Gov't Code § 552.117(a)(1). Section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular phone service is paid for by the employee with his or her own funds. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

to cellular mobile numbers paid for by governmental body and intended for official use). 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 made. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district must withhold the information we have marked under 552.117 if the employees at issue elected to keep such information confidential prior to the receipt of this request. If the employees at issue did not elect to keep such personal information confidential, the information must be released, along with the remaining information.

In summary, the district must withhold the marked e-mail addresses under section 552.137 of the Government Code to the extent the owners do not have a contractual relationship with the district. To the extent the cellular telephone numbers we have marked are personal cellular telephone numbers that belong to district employees who made a timely election under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining information 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). If the governmental body does not file suit over 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).

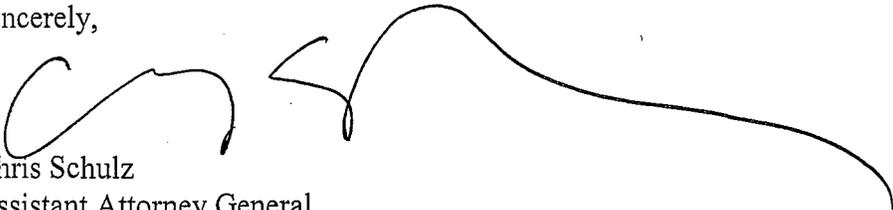
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental

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,



Chris Schulz
Assistant Attorney General
Open Records Division

CS/jb

Ref: ID# 319347

Enc. Submitted documents

c: Mr. Donald L. Hilborn
6507 Hedgeton Court
Spring, Texas 77389
(w/o enclosures)