



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 15, 2008

Ms. Angela H. Robinson  
Law, Snakard & Gambill  
1600 West Seventh Street, Suite 500  
Fort Worth, Texas 76102

OR2008-14129

Dear Ms. Robinson:

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# 324779.

The Tarrant County College District (the "district"), which you represent, received a request for the chancellor's calendar for a particular time period, the contract between the district and Champion Partners ("Champion"), and communications between the chancellor and any staff member of Radio Shack, KanAm Grund, or Champion. You state the district has released the requested calendar and contract to the requestor. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code, and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you acknowledge that the district failed to meet the deadlines prescribed by section 552.301 of the Government Code in requesting an open records decision from this office. *See id.* § 552.301(b), (e). 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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

Although you raise sections 552.107 and 552.111 of the Government Code and Texas Rule of Evidence 503, these exceptions and this rule are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under section 552.107 or rule 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 663 at 5 (1999) (governmental body may waive sections 552.107 and 552.111), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the district may not withhold the submitted information pursuant to either section 552.107 or section 552.111, or rule 503. We note, however, that the submitted documents contain information subject to sections 552.117, 552.136, and 552.137 of the Government Code.<sup>1</sup> These exceptions can provide compelling reasons to withhold information; therefore, we will address the applicability of these exceptions to the submitted information.

The submitted information includes a cellular telephone number that the district may be required to withhold under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cellular telephone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld 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 of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not

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<sup>1</sup>The 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).

timely request under section 552.024 that the information be kept confidential. Therefore, the district must withhold the cellular telephone number we have marked under section 552.117(a)(1) if the employee involved pays for the cellular telephone service and if he requested confidentiality for his telephone number under section 552.024 before the district received this request for information.

Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Accordingly, we find the district must withhold the account number we have marked under section 552.136 of the Government Code.

Finally, we note that the remaining information includes personal e-mail addresses. Section 552.137 of the Government Code provides that “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 [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 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. We have marked personal e-mail addresses the district must withhold under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.

In summary, the district must withhold the marked cellular telephone number under section 552.117(a)(1) of the Government Code if the employee involved pays for the cellular telephone service and if he requested confidentiality for his telephone number under section 552.024 of the Government Code before the district received this request for information. The district must withhold the account number we have marked pursuant to section 552.136 of the Government Code. The district must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure. The rest of the submitted 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).

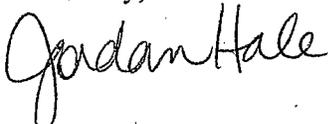
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jordan Hale  
Assistant Attorney General  
Open Records Division

JH/jb

Ref: ID# 324779

Enc. Submitted documents

c: Mr. Bob Mhoon  
3202 Caliente Court  
Arlington, Texas 76017-2557  
(w/o enclosures)