



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2009

Ms. Susan K. Bohn  
General Counsel  
Lake Travis Independent School District  
3322 Ranch Road 620 South  
Austin, Texas 78738

OR2009-09020

Dear Ms. Bohn:

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# 347746 (LTISD Nos. 040809-R260/DL 3713, 040809-R286/DL 3739, 040809-R294/DL 3747, and 040809-R295/DL 3748).

The Lake Travis Independent School District (the "district") received four requests from the same requestor for (1) documents regarding resignations and terminations, including non-renewal of contracts, of district employees and contractors between November 11, 2008 to the date of the request; (2) purchase orders or sales receipts for all district owned or leased vehicles; (3) access charges and documents obtained by the district through Westlaw between January 1, 2007 and December 31, 2007; and (4) the same information as item (3) for the time period of January 1, 2008 to December 31, 2008.<sup>1</sup> You state that you have provided some of the responsive documents to the requestor. You claim that some of the submitted information is subject to section 552.027 of the Government Code. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.103,

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<sup>1</sup>You inform us the requestor has authorized the district to redact information protected under section 552.117(a)(1) of the Government Code, which provides for the confidentiality of home addresses, social security numbers, telephone numbers, and family member information of public employees who elect confidentiality. We note you have redacted such information from the submitted information.

552.111, and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information, part of which is a representative sample.<sup>3</sup>

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy, which protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *See id.* at 681-82. The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. *See id.* at 683. Additionally, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Upon review, we find the information we have marked in Tab 1 constitutes highly intimate or embarrassing information of no legitimate public interest. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, the remaining information you have marked pertains to an individual who has been de-identified. Accordingly, we find that privacy interests are not implicated by the release of the remaining information. Therefore, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

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<sup>2</sup>Although you also raise section 552.107 of the Government Code, you have provided no arguments explaining how this exception is applicable to the submitted information. Thus, the district has waived its claim under section 552.107. *See* Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general).

<sup>3</sup>We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(2). Accordingly, the district must withhold the information you have marked in Tab 2 under section 552.130 of the Government Code.

Next, you state that the information in Tabs 3 and 4 is commercially available information. Section 552.027 of the Government Code provides as follows:

(a) A governmental body is not required under this chapter to allow the inspection of or to provide a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public.

(b) Although information in a book or publication may be made available to the public as a resource material, such as a library book, a governmental body is not required to make a copy of the information in response to a request for public information.

(c) A governmental body shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of a governmental body.

Gov't Code § 552.027. Section 552.027 is designed to alleviate the burden of providing copies of commercially available books, publications, and resource materials maintained by governmental bodies, such as telephone directories, dictionaries, encyclopedias, statutes, and periodicals. You state that the information in Tabs 3 and 4 consists of documents that are purchased by the district from Westlaw for research purposes and that Westlaw documents are commercially available to the public. In this instance, however, the requestor has not requested commercially available publications in particular, but rather the requestor seeks documents retrieved by the district from Westlaw. We note this information cannot be obtained from Westlaw by a member of the public if the member of the public is not aware of which documents were searched or, at the very least, the nature of the research performed. The fact that commercially available research materials happen to be responsive to the request does not, in our view, bring such materials within the ambit of section 552.027. Accordingly, due to the nature of the request, we determine that the information in Tabs 3 and 4 is not subject to section 552.027 and must be released unless it falls within an exception to public disclosure.

Section 552.103 provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

*Id.* § 552.103(a), (c). A governmental body that claims an exception to disclosure under section 552.103 has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date that the request for information is received, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). Both prongs of this test must be satisfied in order for information to be excepted under section 552.103(a). See ORD 551 at 4.

You assert the information in Tab 4 is excepted from disclosure under section 552.103. You state, and provide documentation showing, the district is named in a lawsuit styled *Meadows v. Lake Travis Independent School District*, Civil Action No. A: 08-CA-819-SS, which is pending in the United States District Court for the Western District of Texas, Austin Division. You also state this case was pending when the district received the instant request. Based on your representations and our review of the information in Tab 4, we conclude litigation was pending when the district received the request and that the information in Tab 4 relates to the pending litigation. We therefore conclude that the district may withhold Tab 4 under section 552.103 of the Government Code.<sup>4</sup>

However, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has been obtained from or provided to all other parties in the pending litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends when the litigation has concluded. Attorney General Opinion MW-575 at 2 (1982); Open Records Decision Nos. 350 at 3 (1982), 349 at 2 (1982).

Finally, we note that the information in Tab 3 is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception

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<sup>4</sup>As our ruling is dispositive, we need not address your other argument against disclosure of this information.

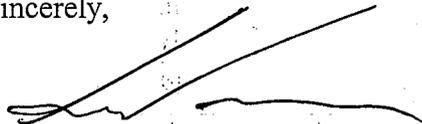
applies to the information. *Id.* If a member of the public wishes to make copies of materials protected by copyright, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the information we have marked in Tab 1 under section 552.101 of the Government Code in conjunction with common-law privacy. The information you have marked in Tab 2 must be withheld under section 552.130 of the Government Code. Tab 4 may be withheld under section 552.103 of the Government Code. The remaining information must be released to the requestor, but any copyrighted information may only be released in accordance with copyright law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 347746

Enc. Submitted documents

c: Requestor  
(w/o enclosures)