



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 4, 2010

Mr. John A. Kazen
Kazen, Meurer & Pérez, L.L.P.
For Laredo Independent School District
P.O. Box 6237
Laredo, Texas 78042-6237

OR2010-08105

Dear Mr. Kazen:

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# 381614.

The Laredo Independent School District (the "district"), which you represent, received a request for five categories of information, including grievances filed against a named school principal and attendance records for specified teachers and administrators. You state the district has provided some of the requested information to the requestor. You claim portions of the submitted attendance records are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body

received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this instance, you state the district received the request for information on February 24, 2010. You did not, however, request a ruling from this office until March 31, 2010. Furthermore, you did not submit comments explaining why your stated exceptions apply or a copy of the information requested until April 7, 2010. You state the district notified the requestor, pursuant to section 552.221(d) of the Government Code, the district needed additional time to locate the requested records and would contact the requestor by March 30, 2010 regarding the status of the request. While section 552.221 does allow a governmental body that does not seek to withhold responsive information from disclosure to negotiate with the requestor the date and hour the information will be made available, it does not grant a governmental body additional time to seek an open records decision and submit the information at issue in accordance with section 552.301. *See id.* § 552.221(d). Furthermore, the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1-2 (1988). Thus, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim some of the submitted information is excepted under section 552.101 of the Government Code. We note some of the information may be excepted under section 552.117 of the Government Code.¹ Because sections 552.101 and 552.117 of the Government Code can provide compelling reasons to withhold information, we will consider whether or not any of the submitted information is excepted from disclosure under the Act.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

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

Code § 552.101. This exception encompasses the doctrine of common-law privacy, which protects information that (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. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex.1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. Information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest, and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 405 at 2-3 (1983) (public has interest in manner in which public employee performs job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under common-law right of privacy); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). This office has also found, however, some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You have indicated the type of information you claim is protected by common-law privacy. Upon review, we find the representative sample of information pertaining to a specific illness we have marked is not of legitimate public interest and, therefore, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy. The information you seek to withhold does not pertain to any specific illnesses or disabilities. Because you have not otherwise demonstrated how this information is protected by common-law privacy, the information you seek to withhold may not be withheld under section 552.101 of the Government Code.

The remaining information includes district employees' personal information that may be protected under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether 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). The district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

We have marked a representative sample of district employees' family information in the remaining information. You have not informed us whether or not the employees timely chose to not allow public access to their personal information. Therefore, to the extent the employees timely requested confidentiality for their personal information, the district must

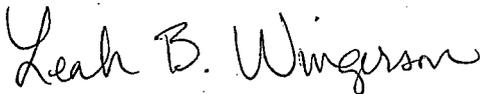
withhold the marked information pursuant to section 552.117(a)(1) of the Government Code. To the extent the employees did not timely request confidentiality, the marked information may not be withheld under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the medical information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the employees whose family information we have marked timely requested confidentiality for their personal information, the district must withhold the marked information pursuant to section 552.117(a)(1) of the Government Code. The remaining information must be released.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 381614

Enc. Submitted documents

c: Requestor
(w/o enclosures)