



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 23, 2010

Mr. Rusty Meurer  
Kazen, Meurer & Pérez, L.L.P.  
P.O. Box 6237  
Laredo, Texas 78042-6237

OR2010-09224

Dear Mr. Meurer:

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# 384188.

The Laredo Community College (the "college"), which you represent, received a request for all files, including legal, employment, and personnel files, pertaining to the requestor's client. You state the college has provided most of the requested information to the requestor. You claim the submitted memorandum, incident report, and other investigation records are excepted from disclosure under sections 552.101, 552.102, 552.107, 552.108, 552.111, 552.116, 552.117, and 552.135 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the college'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

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<sup>1</sup>Although you also raise section 552.101 of the Government Code in conjunction with the attorney-client privilege, this office has concluded section 552.101 does not encompass discovery privileges. *See Open Records Decision* Nos. 676 at 1-2 (2002), 575 at 2 (1990). In this instance, section 552.107 of the Government Code is the proper exception to claim for the substance of your attorney-client privilege assertion.

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 college received the request for information on April 1, 2010. You did not, however, request a ruling from this office until April 19, 2010. Furthermore, you did not submit comments explaining why your stated exceptions apply or a copy of the information requested until April 26, 2010. Thus, we find the college 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 id.* § 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 assert some of the submitted information is excepted under section 552.101 of the Government Code in conjunction with the common-law informer's privilege. Because the purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect a third person, the informer's privilege, unlike other claims under section 552.101 of the Government Code, can be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the informer's privilege may not serve as a compelling reason for overcoming the presumption of openness under section 552.302. Consequently, the college may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with the informer's privilege. Although you also assert some of the submitted information is excepted under sections 552.107, 552.108, 552.111, and 552.116 of the Government Code, these sections 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 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, no portion of the submitted information may be withheld under section 552.107, section 552.108, section 552.111, or section 552.116 of the Government Code. However, because sections 552.101, 552.102, 552.117, and 552.135 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

You claim some of the submitted information is confidential under section 552.101 of the Government Code in conjunction with the doctrine of common-law privacy and under

section 552.102 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). We will, therefore, consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

Common-law privacy 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). In this instance, you have not provided any arguments explaining the applicability of common-law privacy to the submitted records, which pertain to alleged employee misconduct and possible criminal behavior. Furthermore, although some of the information may be considered highly intimate or embarrassing, we find there is a legitimate public interest in information related to the job performances of the individuals involved. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy or under section 552.102 of the Government Code.

Section 552.117(a)(1) of the Government Code 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 college 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 home addresses, home telephone numbers, and family information of college employees that may be subject to section 552.117(a)(1). You have not informed us whether any of the employees whose information is at issue timely chose to not allow public access to their personal information. Therefore, if the employee whose family information is at issue timely elected to withhold this information, the college must withhold the family information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employee did not timely elect to withhold this information, then the college may not withhold the marked family information under section 552.117(a)(1) of the Government Code.

We note the home addresses and telephone numbers we have marked are contained within college police department law enforcement records. Section 552.117 applies only to records the governmental body is holding in an employment capacity. You have not explained whether or not the college also maintains these law enforcement records separately as administrative records for personnel reasons. Thus, if the college maintains these records as administrative records and the employees timely elected to withhold their home addresses and telephone numbers, the college must withhold the addresses and telephone numbers we have marked pursuant to section 552.117(a)(1) of the Government Code. If the college does not maintain these records as administrative records or the employees did not timely elect to withhold their home addresses and telephone numbers, then the college may not withhold the marked addresses and telephone numbers under section 552.117(a)(1) of the Government Code.

Section 552.135 of the Government Code provides, in relevant part:

(a) "Informer" means a student or a former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a)-(b). You assert some of the remaining information is excepted under section 552.135. By its terms, however, section 552.135 applies to only public school districts and not to colleges or universities. *See Ex Parte Torres*, 943 S.W. 2d 469 (Tex. Crim. App. 1997) (stating if language of statute is not ambiguous, court must give effect to plain meaning of its words unless doing so would lead to absurd results). Accordingly, the college may not withhold any of the remaining information under section 552.135 of the Government Code.

In summary, if the employee whose family information we have marked timely elected to withhold this information, the college must withhold the marked family information pursuant to section 552.117(a)(1) of the Government Code. Otherwise, this information must be released. If the college maintains the law enforcement records in which we have marked employees' home addresses and telephone numbers separately as administrative records and the employees timely elected to withhold the information at issue, the college must withhold the marked addresses and telephone numbers pursuant to section 552.117(a)(1) of the Government Code, and the remaining information must be released.<sup>2</sup> If the college does not maintain the law enforcement records separately as administrative records or the employees did not timely elect to withhold their home address and telephone information, the marked addresses and telephone numbers may not be withheld under section 552.117(a)(1) of the Government Code. Instead, the marked addresses and telephone numbers must be released, along with the remaining information.

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

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

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<sup>2</sup>We note the information being released includes the requestor's client's home address, family information, and social security number, which may be confidential under section 552.117(a)(1) of the Government Code, and Texas driver's license number, which is generally confidential under section 552.130 of the Government Code. Because these exceptions were enacted to protect a person's privacy, the requestor has a right of access to his client's private information under section 552.023(a) of the Government Code as his client's authorized representative. If the college receives another request for this information from an individual other than this requestor, the college should again seek our decision.

Ref: ID# 384188

Enc. Submitted documents

c: Requestor  
(w/o enclosures)