



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 6, 2010

Mr. Richard Bain, Jr.  
Superintendent of Schools  
Silsbee Independent School District  
415 Highway 327 West  
Silsbee, Texas 77656-4700

OR2010-11942

Dear Mr. Bain:

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# 389843.

The Silsbee Independent School District (the "district") received three requests from different requestors for several categories of information pertaining to a named former district employee. One of the requestors also requested a list of candidates who were considered for the position of high school principal and specified district board meeting minutes. Additionally, one of the requestors made a separate request for information pertaining to the district's superintendent. You state you have released some of the requested information to the requestors. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.<sup>1</sup> You state you have notified the former employee to whom the requested information relates pursuant to section 552.304 of the Government Code.<sup>2</sup> See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for Attorney General

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<sup>1</sup>Although the district has also marked information under section 552.103 of the Government Code, you provided no arguments in support of withholding the submitted information under this exception. Thus, the district has waived its claim under section 552.103. See Gov't Code §§ 552.301(e)(1)(A), .302.

<sup>2</sup>As of the date of this letter, we have not received any arguments from the interested employee regarding the information at issue.

ruling should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the district requested clarification of the request for information relating to the district's superintendent. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). As of the date of this letter, you have not indicated the district has received a response to its request for clarification. Accordingly, the district has no obligation at this time to release any information that might be responsive to this request. However, if the district receives clarification and wishes to withhold any of the information encompassed by the clarified request, you must request another decision from this office at that time. See *id.* §§ 552.301, .302; see also *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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 Code § 552.101. This section encompasses information protected by common-law privacy. Section 552.102 of the Government Code 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we address your section 552.102 claim in conjunction with your common-law privacy claim under section 552.101 of the Government Code.

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.*, 540 S.W.2d at 685. To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type 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. *Id.* at 683. We note the public generally has a legitimate interest in information that relates to public employment and public employees. See Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (public has

legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find you have failed to demonstrate how any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the submitted information is confidential under the doctrine of common-law privacy, and it may not be withheld under either section 552.101 or section 552.102 of the Government Code on that basis.

We note a portion of the submitted information may be subject to section 552.117 of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from public 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. *See* Gov't Code § 552.117(a)(1). 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, 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. We have marked a portion of the submitted information that is generally subject to section 552.117(a)(1). If the employee to whom this information pertains timely elected confidentiality under section 552.024 for the type of information at issue, the district must withhold the marked information under section 552.117(a)(1) of the Government Code. If the employee did not timely elect confidentiality for this type of information, the district may not withhold the marked information under section 552.117(a)(1). As you raise no further exceptions to the disclosure of the remaining information, it 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](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

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<sup>3</sup>The 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).

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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', with a long horizontal flourish extending to the right.

Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 389843

Enc. Submitted documents

c: Requestor  
(w/o enclosures)