



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 25, 2010

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

OR2010-16156

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# 397898 (080310-DB8/DL 4328, 080310-DB7/DL 4327).

The Lake Travis Independent School District (the "district") received two requests from the same requestor for: (1) documents regarding all resignations and terminations of all district employees and contractors during the months of June 2010 and July 2010; and (2) all billing statements, invoices, and receipts for all legal expenses the district received or paid during the month of July 2010. You state you have provided some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.117 of the Government Code and privileged pursuant to Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code § 552.301(b)*. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. *Id.* § 552.301(e)(1)(A)-(D). You state the district received the written requests for information on August 3, 2010. Accordingly, the district's ten business day deadline was August 17, 2010 and the fifteen business day deadline was August 24, 2010. With respect to the request for information labeled 080310-DB7/DL 4327, you did not request a ruling until August 25, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). In addition, you did not submit to this office a copy of the written request for information labeled 080310-DB7/DL 4327 until October 25, 2010. Further, with respect to both requests, you did not submit comments explaining why the stated exceptions apply or a copy of the information until August 25, 2010. *See id.* Consequently, we find the district did not comply with section 552.301 in requesting this decision.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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). Normally, 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. *See* Open Records Decision No. 150 at 2 (1977). Although you assert the submitted attorney fee bills are protected under Texas Rule of Evidence 503 and section 552.107 of the Government Code, this rule and this exception 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) (claim of attorney-client privilege under section 552.107(1) or rule 503 may be waived), 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of the submitted information may be withheld under section 552.107 of the Government Code or rule 503 of the Texas Rules of Evidence. However, because sections 552.101, 552.117, and 552.137 of the Government Code can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.<sup>1</sup>

You assert that the information you have marked in Tab 3 is protected by common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information

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<sup>1</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).

considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section 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 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. This office has found that 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). This office also has found that personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 600. Generally, however, the public has a legitimate interest in information that relates to public employment and public employees, and information that pertains to an employee’s actions as a public servant generally cannot be considered beyond the realm of legitimate public interest. *See* Open Records Decisions Nos. 470 at 4 (1987) (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 (scope of public employee privacy is narrow). Upon review, we find that the district has failed to demonstrate how the information it has marked in Tab 3 is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any portion of the information in Tab 3 under section 552.101 of the Government Code in conjunction with common-law privacy.

You have highlighted information that you claim is subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the 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 that this information be kept confidential under section 552.024. Gov’t Code § 552.117. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). We have marked personal information pertaining to former district employees in Tab 3 that is subject to section 552.117(a)(1). Accordingly, to the extent the former employees timely elected confidentiality for their personal information under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). However, the remaining information you seek to withhold in Tab 3 does not consist of an employee or former employee’s home address or telephone number, social security number, or family member information. Consequently, none of the remaining information in Tab 3 may be withheld under section 552.117.

We note the remaining information contains an e-mail address that may be subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail address we have marked under section 552.137, unless the owner affirmatively consents to its release.<sup>2</sup>

In summary, to the extent the former employees at issue timely elected confidentiality for their personal information under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its release. 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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 397898

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)