



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2010

Ms. Elisabeth A. Donley
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2010-16490

Dear Ms. Donley:

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# 398507.

The Lewisville Independent School District (the "district"), which you represent, received a request for expense reports, including receipts, submitted by board members during a specified time period and expense reports for travel or mileage, including receipts, submitted by two named individuals during the same time period. You state some of the responsive information has or will be made available to the requestor. You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note, and you acknowledge, that the district has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. *See id.* § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information to

overcome this presumption. *See id.* § 552.301; *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *see also* Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by law or affects third party interests. *See* Open Records Decision No. 150 (1977). Because sections 552.101, 552.117, 552.130, 552.136, and 552.137 can provide compelling reasons to withhold information, we will consider your arguments regarding these exceptions.

Next, we understand you have marked portions of the submitted information as being non-responsive because those portions do not pertain to travel or mileage for the two named individuals or otherwise pertain to the request for expense reports submitted by the board members. However, we find the information you have marked as nonresponsive comprises of portions of the expense reports and receipts submitted by the board members or named individuals to the district. Therefore, we find this information is responsive to the request.

Section 552.101 of the Government Code exempts 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 common-law right of privacy, which protects information if it (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.

This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 545 (1990), 523 (1989) (individual’s mortgage payments, assets, bills, and credit history). You state the submitted information includes information related to personal financial decisions of district employees and officials. You explain this information includes expenses charged on a district credit card issued to a district employee where the employee reimbursed the district in full for the expense, expenses paid by an individual using the individual’s personal credit card or cash for which the individual did not seek reimbursement from the district, and expenses for home telephone, television, and internet services for which the district reimbursed the individuals for all or a portion of the expense. We find that the personal expenditures by district employees or officials, for which the individuals did not seek reimbursement, are protected under section 552.101 in conjunction with common-law privacy. However, we find that those expenses where the individual used a district credit card but later reimbursed the district and those portions of bills for home telephone, television, and internet services paid for in part or full by the district relate to financial transactions between an individual and a governmental body that may not be withheld under section 552.101 on the basis of common-law privacy. Accordingly, the district must withhold the information you have marked under

section 552.101 of the Government Code in conjunction with common-law privacy, except as we have marked for release.

Section 552.117(a)(1) excepts the home address and telephone number, social security number, and family member information of a current or former employee or official of a governmental body who requests that this information be kept confidential under section 552.024. The determination of whether a particular item of information is protected by section 552.117(a)(1) must be made at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the district's receipt of the request for the information. The district may not withhold information under section 552.117(a)(1) on behalf of a current or former employee or official who did not make a timely election for confidentiality under section 552.024. You inform us the employees and officials at issue elected, prior to the district's receipt of the instant request, to keep certain information confidential. Therefore, the district must withhold the information you have marked, as well as the additional information we have marked, under section 552.117(a)(1).

Section 552.130 of the Government Code excepts from disclosure information relating to a motor vehicle operator's license, driver's license, motor vehicle title, or registration issued by a Texas agency. Gov't Code § 552.130(a)(1), (2). The district must withhold the information you have marked, as well as the additional information we have marked, under section 552.130.

Section 552.136 of the Government Code provides "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). An access device number is one that may be used to (1) obtain money, goods, services, or another thing of value, or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument, and includes an account number. *See id.* § 552.136(a) (defining "access device"). Accordingly, the district must withhold the information we have marked under section 552.136, as well as the information you have marked, except as we have marked for release. You have not explained, however, how the remaining information we have marked for release constitutes access device numbers for purposes of section 552.136. Thus, you have failed to demonstrate the applicability of section 552.136 of the Government Code to this information and it may not be withheld on that basis.

Section 552.137 of the Government Code 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). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website

address, or an e-mail address that a governmental entity maintains for one of its officials or employees. The addresses you have marked do not appear to be of types specifically excluded by section 552.137(c). Accordingly, the district must withhold the marked e-mail addresses under section 552.137, unless the owners of the addresses affirmatively consent to their release.¹ *See id.* § 552.137(b).

We note some of the remaining information may be 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 copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, 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.

In summary, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy, except as we have marked for release. The district must withhold the information marked under sections 552.117 and 552.130 of the Government Code. The district must withhold the information we have marked under section 552.136 of the Government Code, as well as the information you have marked, except as we have marked for release. The district must withhold the marked e-mail addresses under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

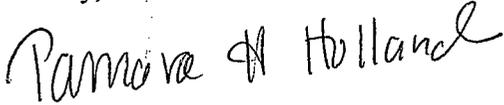
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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, 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

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number and a Texas license plate number under section 552.130 of the Government Code, bank account numbers and bank routing numbers under section 552.136 of the Government Code, and 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.

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 cursive script that reads "Tamara H. Holland". The signature is written in dark ink and is positioned above the typed name.

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/em

Ref: ID# 398507

Enc. Submitted documents

c: Requestor
(w/o enclosures)