



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2011

Ms. Jane Sobey Bubert
Attorney for Hurst-Eules-Bedford Independent School District
Bracket & Ellis, PC
100 Main Street
Fort Worth, Texas 76102-3090

OR2011-02858

Dear Ms. Bubert:

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# 410104.

The Hurst-Eules-Bedford Independent School District (the "district"), which you represent, received a request for (1) information regarding all bus accidents, including dates, damages, repairs, photographs, video, reports, statements, and any resulting discipline for three named district employees; (2) the district's accident log from the beginning of the 2009-2010 school year through December 2, 2010, including drivers' names and any resulting discipline; and (3) any meeting minutes or memoranda to bus drivers and monitors regarding changes in work roles given by two named district employees. You state some information has been released to the requestor, with redactions as permitted by Open Records Decision No. 684 (2009).¹ You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. Additionally, you state that release of this information may implicate the interests of five district employees. Accordingly, you submit documentation showing that you notified the employees at issue of the request and of their right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from two of the employees at issue. We have considered the submitted arguments and reviewed the submitted information.

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an opinion from this office.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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). You cite to *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), in support of your argument under common-law privacy for the submitted information. In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment in the workplace. Here, however, the information at issue pertains to disciplinary actions taken against district employees concerning issues unrelated to sexual harassment. Because this information does not concern sexual harassment, we find that *Ellen* is not applicable. Therefore, none of the submitted information may be withheld under section 552.101 in conjunction with common-law privacy and the court's holding in *Ellen*.

Additionally, this office has stated in numerous opinions that the work behavior and performance of a public employee and the conditions for his or her continued employment are generally matters of legitimate public interest not protected by the common-law right of privacy. See Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees), 438 at 4 (1986) (public has legitimate interest in details of accusation of misconduct against city supervisor), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his 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 either the constitutional or common-law right of privacy). Similarly, the public has a legitimate interest in knowing the reasons for the dismissal of public employees and the circumstances surrounding their termination. Open Records Decision No. 444 at 6 (1986); see Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find that there is a legitimate public interest in the submitted information. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code on the basis of common-law privacy.

One of the employees at issue claims his information is excepted under section 552.102 of the Government Code. 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[.]" Gov't Code § 552.102(a). Upon review, we find none of the submitted information is excepted from disclosure under section 552.102(a) of the Government Code. Accordingly, none of the submitted information may be withheld on that basis.

The employee next raises section 552.110 of the Government Code. Section 552.110 protects (1) trade secrets, and (2) commercial or financial information, the disclosure of

which would cause substantial competitive harm to the person from whom the information was obtained. *See* Gov't Code § 552.110(a)-(b). Section 552.110(a) protects "[a] trade secret obtained from a person and privileged or confidential by statute or judicial decision." *Id.* § 552.110(a). The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts, which defines a trade secret as:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

Restatement of Torts § 757 cmt. b (1939); *see also* *Hyde Corp. v. Huffines*, 314 S.W.2d 776 (Tex. 1958). In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors.² Restatement of Torts § 757 cmt. b (1939). This office will accept a private person's claim for exception under section 552.110(a) as valid if the person establishes a *prima facie* case for the exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5-6 (1990). However, we cannot conclude section 552.110(a) is applicable unless the party claiming this exception has shown the information at issue meets the definition of a trade secret and has demonstrated the necessary factors to establish a trade secret claim. *See* Open Records Decision No. 402 (1983).

² The Restatement of Torts lists the following six factors as indicia of whether information constitutes a trade secret:

- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and other involved in [the company's] business;
- (3) the extent of measures taken by [the company] to guard the secrecy of the information;
- (4) the value of the information to [the company] and [its] competitors;
- (5) the amount of effort or money expended by [the company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Restatement of Torts § 757 cmt. b (1939); *see* Open Records Decision Nos. 319 at 2 (1982), 306 at 2 (1982), 255 at 2 (1980).

Section 552.110(b) protects “[c]ommercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained[.]” Gov’t Code § 552.110(b). This exception to disclosure requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would likely result from release of the information at issue. *Id.*; Open Records Decision No. 661 at 5-6 (1999) (entity must show by specific factual evidence that release of information would cause it substantial competitive harm).

Upon review we find that the employee has not established a *prima facie* case that any of the information at issue constitutes a trade secret for purposes of section 552.110(a), nor has he provided specific factual evidence that release of this information would cause him substantial competitive harm under section 552.110(b). Therefore, the district may not withhold any of the submitted information under section 552.110 of the Government Code.

Finally, the employee raises section 552.113 of the Government Code, which protects certain geological, geophysical, and other information regarding the exploration or development of natural resources. *See* Gov’t Code § 552.113; *see generally* Open Records Decision No. 627 (1994). Because the employee has not demonstrated this exception is applicable to any of his information, the district may not withhold any of his information under section 552.113 of the Government Code.

We note that portions of the submitted information are subject to section 552.117 of the Government Code.³ This section excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential pursuant to section 552.024. *See* Gov’t Code §§ 552.117(a)(1), .024(b). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time the governmental body receives the request for the information. *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 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 the employees’ addresses, which are subject to section 552.117. If the employees to whom this information pertains timely requested confidentiality under section 552.024, then the district must withhold their addresses under section 552.117. If the employees did not timely elect to withhold their personal information, then the district may not withhold their addresses under section 552.117.

³ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the district must withhold the information we have marked under section 552.117, provided that the employees at issue timely requested confidentiality under section 552.024. 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID #410104

Enc. Submitted documents

c: Requestor
(w/o enclosures)