



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 28, 2011

Mr. Adam D. Courtin
For Spring Independent School District
Rogers, Morris & Grover, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2011-19042

Dear Mr. Courtin:

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# 440859.

The Spring Independent School District (the "district"), which you represent, received a request for documents or contracts reviewed by the district's school board trustees regarding a named former employee, as well as employment records, performance review documents, and incident reports regarding the same named former employee. You state the district has provided some of the requested information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301 of the Government Code 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). You state the district received the request for information on October 5, 2011. Accordingly, the district's ten-business-day

¹Although you initially also raised section 552.135 of the Government Code as an exception to disclosure of the information at issue, you have provided no arguments regarding the applicability of this section. Therefore, we assume you no longer assert section 552.135. *See* Gov't Code §§ 552.301(b), (e), .302.

deadline was October 19, 2011. Although the district's request for a ruling and claims under sections 552.102 and 552.108 of the Government Code were timely submitted to this office on October 19, 2011, the district did not raise its claim under section 552.101 of the Government Code until October 26, 2011. Consequently, we find the district failed to comply with the procedural requirements of section 552.301 with respect to its claim under section 552.101 of the Government Code.

Generally, a governmental body's failure to timely raise an exception results in its waiver, unless the exception is a compelling reason to withhold the information from disclosure. *See generally 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 generally* 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). Because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this exception, along with your timely-raised claims under sections 552.102 and 552.108 of the Government Code.

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 the doctrine of common-law 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 the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 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). You assert the employee statement, administrator notes, and police investigation record submitted as Exhibits C, D, and E are protected by common-law privacy in their entirety. Although some of this information may be considered highly intimate or embarrassing, we find the information is of legitimate public interest because it pertains to a district employee's employment qualifications and job performance. *See* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Consequently, the district may not withhold any of the information in

Exhibits C, D, and E under section 552.101 of the Government Code in conjunction with common-law privacy.

We note Exhibit C contains information that may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, 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.² 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 district 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 the named former employee's personal information in Exhibit C. You have not informed us whether or not the employee timely chose to not allow public access to his personal information. Therefore, if the employee timely requested confidentiality for his personal information, the district must withhold the information we have marked in Exhibit C under section 552.117(a)(1) of the Government Code. If the employee did not timely request confidentiality, the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the investigation record in Exhibit E pertains to a concluded criminal investigation by the district's police department that did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per*

²The 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).

curiam, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district may withhold Exhibit E under section 552.108(a)(2) of the Government Code.

You seek to withhold the former employee's college transcripts submitted as Exhibit F. Section 552.102(b) of the Government Code excepts from disclosure all information in transcripts of a professional public school employee other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the former employee's name, courses taken, and degree obtained, the district must withhold Exhibit F under section 552.102(b) of the Government Code.

In summary, if the named former employee timely requested confidentiality for his personal information, the district must withhold the information we have marked in Exhibit C under section 552.117(a)(1) of the Government Code. With the exception of basic information, the district may withhold Exhibit E under section 552.108(a)(2) of the Government Code. With the exception of the former employee's name, courses taken, and degree obtained, the district must withhold Exhibit F under section 552.102(b) of the Government Code. The district must release 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, 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

Ref: ID# 440859

Enc. Submitted documents

c: Requestor
(w/o enclosures)