



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2012

Mr. John A. Kazen
For Laredo Independent School District
Kazen, Meurer & Pérez, L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2012-06240

Dear Mr. Kazen:

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# 452102.

The Laredo Independent School District (the “district”), which you represent, received a request for “any and all email correspondence” during a specified time period pertaining to a specified allegation involving a named individual. We understand the district has released some information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.135 of the Government Code. You state release of the submitted information may implicate the privacy interests of a third party. Accordingly, you state you notified the third party of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov’t Code § 552.305(d) (permitting interested third party to submit to attorney general reasons why requested information should not be released). We have received and considered comments from a representative of the requestor and from an interested third party. *See* Gov’t Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the district’s procedural obligations under the Act. Section 552.301 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), the governmental body must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov’t Code § 552.301(a), (b). In this instance, you state the district received the request for

information on December 7, 2011. This office does not count the date the request was received or holidays as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the district was required to request a decision from this office by December 21, 2011. However, the envelope in which you submitted your request for a decision bears a postmark date of February 23, 2012. *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). Consequently, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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). 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). You assert some of the submitted information is confidential under the common-law informer's privilege. However, the common-law informer's privilege is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision No. 549 at 6 (1990) (purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect third party); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, the district's claim under the common-law informer's privilege is not a compelling reason to overcome the presumption of openness, and the district may not withhold any of the submitted information on that ground. You also claim portions of the submitted information are subject to sections 552.101 and 552.135 of the Government Code. Because sections 552.101 and 552.135 can provide compelling reasons to withhold information, we will address the applicability of these exceptions to the submitted information. We also note the submitted information may contain information subject to section 552.117, which can provide a compelling reason for non-disclosure under section 552.302.¹

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 common-law right to 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

¹The 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).

demonstrate the applicability of common-law privacy, both prongs of this test must be met. *Id.* at 681-82. Common-law privacy protects the types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). Upon review, we find the submitted information is not intimate or embarrassing and is of legitimate public interest. Therefore, none of the submitted information may be withheld under section 552.101 on the basis of common-law privacy.

Section 552.117(a)(1) excepts from disclosure the home address and telephone numbers, social security number, family member information, and emergency contact 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. Gov't Code § 552.117(a)(1). Additionally, section 552.117 encompasses a cellular telephone number, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of an employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. We have marked a cellular telephone number in the submitted information under section 552.117(a)(1) of the Government Code. The district must withhold this cellular telephone number under section 552.117(a)(1) to the extent the employee concerned timely elected under section 552.024 to keep her information confidential; however, the district may only withhold the cellular telephone number we have marked if the district does not pay for the cellular telephone service.

Section 552.135 of the Government Code provides, in pertinent part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a)-(b). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). We note that section 552.135 protects an informer's identity, but it

does not generally encompass protection for witness statements. In this instance, although you assert section 552.135 protects the identity of the district employee who reported “athletic infractions,” which you characterize as violations of University Interscholastic League and school district rules, you have failed to demonstrate that such rules constitute civil, criminal, or regulatory law for the purposes of section 552.135. However, the district employee at issue has briefed this office, and informs us the employee discovered “the misappropriation of funds,” and reported what the employee believed was a possible violation of section 31.03 of the Penal Code to the district. Section 31.03 makes theft a criminal offense, and thus, constitutes a criminal law for purposes of section 552.135 of the Government Code. We note the district employee at issue has not consented to public disclosure of the information that would identify this employee. Accordingly, based on these representations and our review, we conclude the district must withhold the identifying information of the district employee at issue in the remaining information under section 552.135 of the Government Code.

In summary, the district must withhold the cellular telephone number we have marked under section 552.117(a)(1) to the extent the employee concerned timely elected under section 552.024 to keep her information confidential; however, the district may only withhold the cellular telephone number we have marked if the district does not pay for the cellular telephone service. The district must withhold the identifying information of the district employee at issue in the remaining information under section 552.135 of the Government Code. 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,



Sean Opperman
Assistant Attorney General
Open Records Division

SO/dls

Ref: ID# 452102

Enc. Submitted documents

c: Requestor
(w/o enclosures)