



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 20, 2012

Mr. Tony Resendez
Walsh, Anderson, Gallegos, Green and Trevino, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2012-09409

Dear Mr. Resendez:

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# 458808.

The Kingsville Independent School District (the "district"), which you represent, received two requests from the same requestor for correspondence between named individuals regarding certain complaints and a named individual's letter of resignation. It appears the district is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim 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 that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The district received the request for information on April 24, 2012. Thus, the district's fifteen-business-day deadline under section 552.301(e) to submit the requested information at issue was May 15, 2012. However, the envelope in which you submitted the information at issue to this office is postmarked May 17, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Thus, the district failed to comply with the procedural requirements mandated by section 552.301.

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.101, 552.102, and 552.117 of the Government Code can provide compelling reasons to overcome this presumption.² Therefore, we will consider whether these sections require the district to withhold the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the doctrine of common-law privacy. You assert release of the submitted information would serve to hold employees named in the submitted information to scorn and ridicule. You state this may cause the employees to be placed in a false light. However, section 552.101 does not encompass the doctrine of false-light privacy, which is concerned with whether information would place a person in a false light in the public eye. *See* Open Records Decision No. 579 at 7-8 (1990) (attorney general could not conclude that legislature intended for statutory predecessor to section 552.101 to encompass doctrine of false-light privacy); *see also* Open Records Decision No. 408 at 11 (1984) (fact that the allegations were found untrue could easily be released with the allegations themselves, mitigating harm). Thus, the truth or falsity of information is not relevant under the Act. In addition, the Texas Supreme Court has held false-light privacy is not an actionable tort in

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

Texas. *Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). Accordingly, an argument based on false-light privacy is not grounds for excepting information from public disclosure under the Act. Therefore, the test we will apply to the information at issue is the doctrine of common-law privacy.

In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure 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). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* include 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. The submitted information pertains to the job performance of district employees and board members. This office has stated information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and, therefore, generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications and performance and the circumstances of public employee's resignation or termination, 423 at 2 (1984) (explaining that because of greater legitimate public interest in disclosure of information regarding public employees, employee privacy under section 552.102 is confined to information that reveals "intimate details of a highly personal nature"). Upon review, we find the district has failed to demonstrate any portion of the submitted information is highly intimate or embarrassing. Therefore, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim the submitted information is excepted from disclosure 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 under section 552.102(a) of the Government Code. Accordingly, none of the submitted information may be withheld on that basis.

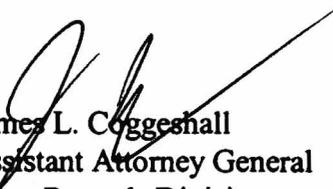
Section 552.117(a)(1) of the Government Code may be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. 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). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this

information was made. Such information may not be withheld for individuals who did not make a timely election. The district must withhold the information pertaining to district employees and a board member we have marked under section 552.117(a)(1) of the Government Code if the employees or board member at issue timely elected to withhold that information pursuant to section 552.024 of the Government Code. The district must release the remaining information to the requestor.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 458808

Enc. Submitted documents

c: Requestor
(w/o enclosures)