



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2012

Ms. Christine Badillo
Counsel for the Leander Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2012-10347

Dear Ms. Badillo:

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# 457979.

The Leander Independent School District (the "the district"), which you represent, received two requests from the same requestor for: (1) any file and documents pertaining to a specified incident, including investigative information; (2) documents related to discrepancies in district athletic receipts discovered after a specified event, including corresponding gate receipts; (3) any documents released to the Austin American Statesman pertaining to the specified incident, a named former employee's resignation, and missing gate receipts; (4) documents pertaining to the former employee threatening to sue the district; and (5) correspondence between the district and the Leander Police Department regarding the specified incident. You state the district has released some of the requested information. You indicate the district does not have information responsive to a portion of one of the requests.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹We note the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

Initially, you inform us the information submitted as Exhibit 2 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-09292 (2012). In that ruling, we concluded the district must withhold certain marked information under sections 552.130 and 552.135 of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the district must continue to rely on Open Records Letter No. 2012-09292 as a previous determination and withhold or release Exhibit 2 in accordance with that ruling.² *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

You assert Exhibit 3 is excepted from disclosure under section 552.135 of the Government Code, which provides in relevant part the following:

(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 or persons' 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 that 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). You assert Exhibit 3 is excepted from disclosure in its entirety because it pertains to an allegation by a school employee of a criminal violation. Upon review, we find the district has failed to demonstrate how any of Exhibit 3 identifies an individual who reported the alleged violation of law. Thus, we conclude you have failed to establish any portion of Exhibit 3 is excepted from disclosure under section 552.135 of the Government Code.

We note portions of Exhibit 3 are subject to section 552.102(a) of the Government Code.³ 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." *Id.*

²As we are able to make this determination, we do not address your arguments against disclosure of Exhibit 2.

³The 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).

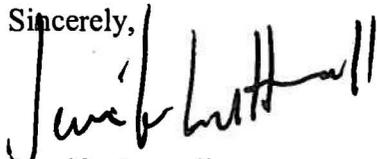
§ 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336, 348 (Tex. 2010). Upon review, we find the district must withhold the employees' dates of birth we have marked under section 552.102(a) of the Government Code.

In summary, the district must continue to rely on Open Records Letter No. 2012-09292 as a previous determination and withhold or release Exhibit 2 in accordance with that ruling. The district must withhold the information we have marked under section 552.102(a) 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/som

Ref: ID# 457979

Enc. Submitted documents

c: Requestor
(w/o enclosures)