



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

This ruling has been modified by court action
The ruling and judgment can be viewed in PDF
format below.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

Mr. Humberto F. Aguilera
For San Antonio Independent School District
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
San Antonio, Texas 78291-0200

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

OR2012-18585

Dear Mr. Aguilera:

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# 471584.

The San Antonio Independent School District (the "district"), which you represent, received a request for the winning bid and the evaluations and score sheets for all bids submitted in response to RFP 12-035 (RTI Reading Materials Services).¹ Although you take no position on the public availability of the requested information, you state the requested information may implicate the proprietary interests of Imagination Station, Inc. d/b/a Istation ("Istation"). Accordingly, you inform us, and provide documentation showing, you notified Istation of the request and of the company's right to submit comments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have received comments from Istation. We have considered the submitted arguments and reviewed the submitted information.

We note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-15117 (2012). In Open Records Letter No. 2012-15117, we determined the district must release the information at issue. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, we conclude the district must rely on

¹We note the district sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

Open Records Letter No. 2012-15117 as a previous determination and release the submitted information in accordance with that ruling. *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). Section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure, unless its public release is expressly prohibited by law or the information is confidential by law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold the previously released information, unless its release is expressly prohibited by law or the information is confidential by law. Istation now claims portions of its submitted information are excepted under sections 552.101 and 552.104 of the Government Code. Section 552.104 is a discretionary exception that protects a governmental body's interests and does not make information confidential by law or prohibit release by law. *See* Gov't Code § 552.104; Open Records Decision 663 at 5 (1999) (waiver of discretionary exceptions), 592 at 8 (1991) (statutory predecessor to section 552.104 could be waived). Thus, the district may not now withhold under section 552.104 any information that was previously released. However, because section 552.101 makes information confidential by law, we will address Istation's claim under that exception.

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. Section 552.101 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. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included 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. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of

the remaining information is highly intimate or embarrassing and of no legitimate public concern. Accordingly, the district may not withhold any of the remaining information under section 552.101 in conjunction with common-law privacy.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With respect to the remaining submitted information, the district must continue to rely on Open Records Letter No. 2012-15117 as a previous determination and release the remaining information in accordance with that ruling.

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 471584

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Imagination Station, Inc. d/b/a Istation
c/o Mr. G. Michael Gruber
Mr. William S. Richmond
Gruber Hurst Johansen Hail Shank, L.L.P.
1445 Ross Avenue, Suite 2500
Dallas, Texas 75202
(w/o enclosures)

APR 10 2014

At 2:50p M.
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GN-12-003266

THE IMAGINATION STATION, INC.,	§	IN THE DISTRICT COURT
RICHARD H. COLLINS,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
GREG ABBOTT, in his official capacity as	§	419th JUDICIAL DISTRICT
Attorney General of the State of Texas, and	§	
the SAN ANTONIO INDEPENDENT	§	
SCHOOL DISTRICT,	§	
<i>Defendants.</i>	§	
	§	TRAVIS COUNTY, TEXAS

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for agreed final judgment. Plaintiffs The Imagination Station, Inc. and Richard H. Collins, (Istation), Defendant the San Antonio Independent School District (SAISD), and Defendant Greg Abbott, Attorney General of Texas, (Attorney General) appeared by and through their respective attorneys and announced to the Court that all matters of fact and things in controversy between them had been fully and finally resolved.

This is an action brought by Plaintiffs to challenge Letter Ruling OR2012-15117 and Letter Ruling OR2012-18585 (the "Rulings"). SAISD received requests from Curriculum Associates and Wireless Generation (the "Requestors") pursuant to the Public Information Act (the "PIA"), Tex. Gov't Code ch. 552, for certain documents submitted to SAISD by Istation. These documents contain information which Istation claims is confidential, proprietary, trade secret, and commercial and financial information exempt from disclosure under the PIA. SAISD requested a ruling from the Open Records Division of the Office of the Attorney General ("ORD"). ORD subsequently issued the Rulings, ordering the release of Istation's Information. SAISD holds the information that has been ordered to be disclosed.

The parties represented to the Court that: (1) pursuant to Tex. Gov't Code § 552.327(2) the Attorney General has determined and represents to the Court that both Requestors have in writing voluntarily withdrawn the requests for information, (2) in light of these withdrawals the lawsuit is now moot, and (3) pursuant to Tex. Gov't Code § 552.327(1) the parties agree to the dismissal of this cause.

IT IS THEREFORE ORDERED that:

1. Because the request of Curriculum Associates was withdrawn, no information should be released in reliance on Letter Ruling OR2012-15117. Letter Ruling OR2012-15117 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(f).
2. Because the request of Wireless Generation k/n/a Amplify was withdrawn, no information should be released in reliance on Letter Ruling OR2012-18585. Letter Ruling OR2012-18585 should not be cited for any purpose as a prior determination by the Office of the Attorney General under Tex. Gov't Code § 552.301(f).
3. All costs of court are taxed against the parties incurring same.
4. This cause is hereby DISMISSED without prejudice.

SIGNED on April 10, 2014.



JUDGE PRESIDING

AGREED:



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