



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 20, 2012

Mr. Dean Micknal
Counsel for the Cleburne Independent School District
Henslee Schwartz, L.L.P.
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2012-18790

Dear Mr. Micknal:

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# 471629.

The Cleburne Independent School District (the "district"), which you represent, received a request for e-mails between the requestor and two named district officials during a specified time period. You state the district has redacted a social security number from the information at issue under section 552.147(b) of the Government Code.¹ You claim some of the submitted information is excepted from disclosure under sections 552.111 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the district received the present request on May 8, 2012, sought a clarification of the request on the same day, and received the final clarified request on June 4, 2012.² You explain you requested a ruling from our office for information responsive to the June 4 final clarified request, in response to which we issued Open Records Letter No. 2012-13586 (2012). You explain you now submit for our review additional documents that were responsive to the June 4 clarified request, but which you inadvertently did not submit for our review when we issued Open Records Letter No. 2012-13586. We will consider your arguments for the information for which you now seek a ruling. The

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

district must withhold or release the information we previously ruled upon in accordance with Open Records Letter No. 2012-13586. *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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, 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. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See* Gov't Code § 552.301(e)(1)(A)-(D). As previously discussed, you state the district received the present request on May 8, 2012, sought a clarification of the request on the same day, and received the final clarified request on June 4, 2012.³ However, you did not submit to this office the information for which you now seek a ruling until September 14, 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). Thus, with respect to the information for which you now seek a ruling, the district failed to comply with the 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 information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information sufficient to overcome this presumption. *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); 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). Although you raise section 552.111 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Thus, in failing to

³*See* Gov't Code § 552.222(b); *see City of Dallas*, 304 S.W.3d at 387.

comply with section 552.301, the district has waived its argument under section 552.111 and may not withhold the information for which you now seek a ruling on that basis. However, because section 552.137 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the information at issue.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address provided to a governmental body on a letterhead or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.⁴ However, we note the remaining e-mail address is provided to the district on a letterhead; thus, the remaining e-mail address may not be withheld under section 552.137. As you raise no further exceptions to disclosure, the district must release the remaining information at issue.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

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⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 471629

Enc. Submitted documents

c: Requestor
(w/o enclosures)