



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 10, 1996

Mr. Mac Wheat
Superintendent
Carthage Independent School District
#1 Bulldog Drive
Carthage, Texas 75633-2370

OR96-2339

Dear Mr. Wheat:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102502.

The Carthage Independent School District (the "district") received a request for "a copy of all information that was sent from the CISD to the District Attorney, Danny Buck Davidson, concerning the money that was returned to the school from Carson Joines." You assert that the requested information may be excepted from required public disclosure under sections 552.101, 552.103, and 552.109 of the Government Code.

Section 552.101 excepts from required public disclosure "information that is considered confidential by law, either constitutional, statutory, or by judicial decision." You do not cite any laws that would except the requested information from required public disclosure. Information may be withheld under section 552.101 in conjunction with a common-law right to privacy, but only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has previously held, however, that a common-law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance. *See* Open Records Decision Nos. 438 (1986), 219 (1978), 230 (1979). We conclude that you may not withhold any of the requested information under section 552.101 of the Government Code.

You also claim that section 552.103, the "litigation exception," excepts the requested information from public disclosure. Section 552.103(a) excepts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You state that you are "of the understanding that the information was presented to a Grand Jury and was not billed." In this instance, we conclude that you have failed to meet the requisite showing that litigation is either pending or reasonably anticipated and, therefore, may not rely upon section 552.103 to withhold the requested information.

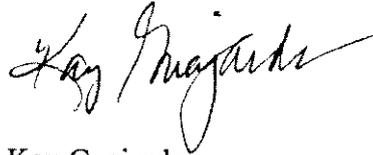
Finally, you assert that the requested information may be withheld under section 552.109, which excepts "private correspondence or communications from an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy." Section 552.109 was designed to protect the privacy rights only of elected office holders, *see* Open Records Decision No. 473 (1987), and the common-law privacy test set out in *Industrial Foundation of the South* should be applied, *see* Open Records Decision No. 506 (1988). Not only do we not find any information which is highly intimate or embarrassing to the district attorney, we do not believe that section 552.109 applies to this official correspondence. Therefore, we conclude that section 552.109 is inapplicable to the information at issue in this request.

In conclusion, you must release the requested information to the requestor.¹ We are resolving this matter with an informal letter ruling rather than with a published open records

¹We note, however, that the submitted information contains some information, particularly certain information on a check written by Mr. Joines to the district, which the district may be required to withhold from public disclosure pursuant to section 552.117. Section 552.117(1) excepts information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 prior to the time this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/RTR/rho

Ref.: ID# 102502

Enclosures: Submitted documents

cc: Mr. Leo Graves
P.O. Box 1012
Carthage, Texas 75633
(w/o enclosures)