



January 7, 2002

Mr. Jacques Treviño
Gorena & Treviño
420 West University Drive
Edinburg, Texas 78539

OR2002-0086

Dear Mr. Treviño:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156973.¹

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for (1) information regarding all persons and companies involved in the creation, installation, training, and maintenance of the substitute system, software, and program within the district; and (2) the names, phone numbers, and addresses of all former district employees who worked for the district during the last two school years, and all reports and evaluations on these individuals. You indicate the first category of the request references a computerized automatic substitute calling system used by school districts, but that the district does not use such a computerized substitute calling system.² We thus understand you to represent that the district has no information responsive to the first category of the request. Regarding the request for personal information of former employees, you state that the district does not maintain records in the manner requested, but that such

¹ You frame your request as a request for an opinion under chapter 402 of the Government Code, but neither you nor the district board of trustees is authorized to request such an opinion. *See* Gov't Code §§ 402.042, .043. We issue this decision under the authority granted this office under subchapter C of chapter 552 of the Government Code. *See* Gov't Code §§ 552.301, .306.

² Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. *Open Records Decision No. 362 (1983); see Open Records Decision No. 452 (1986)* (document not within chapter 552's purview if it does not exist when governmental body receives a request for it).

a list was compiled by a programmer using the district's computer database. You have submitted the list for our review, but have submitted no other information responsive to the request. You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that you argue that the request for reports and evaluations is vague, and that the district, therefore, is not required to provide this information. We disagree. Section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. This office previously has held that a request "must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request." Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982). Section 552.222(b) also provides that "[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]" The purpose of section 552.222 is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.³ ORD 663. Section 552.222(b) does not stand for the proposition that a request may be denied merely because it seeks a broad range of documents. If a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available that may be responsive so that the requestor may narrow or clarify the request. *See id.* at 5. If the requestor chooses not to narrow a broad request, the governmental body must release all responsive information if not claiming an exception to disclosure applies, or request a ruling under section 552.301 of the Government Code for any information it seeks to withhold. The administrative inconvenience of providing public records is not a ground for refusal to comply with the Public Information Act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

You state that you interpret the request for reports and evaluations to refer to performance evaluations, and you assert that these evaluations are excepted from disclosure under section 552.101 of the Government Code. However, you have submitted no such information for our review, as is required under section 552.301 of the Government Code. *See* Gov't Code § 552.301(e)(1)(D). If a governmental body does not comply with section 552.301, section 552.302 provides that the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.-- Austin 1990, no writ) (governmental body must make compelling

³ Section 552.222(b) also limits the nature of the inquiries by the governmental body to those regarding the requested documents themselves. This section prohibits the governmental body from inquiring into the purpose for which the requestor seeks the records.

demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has stated that such a compelling reason is demonstrated where the information is confidential by law. *See, e.g.*, Open Records Decision No. 150 (1977). Although you assert that the performance evaluations are confidential, you cite no specific confidentiality provision, nor did you submit the information for review so that this office may determine whether it is confidential. Accordingly, we have no basis for concluding that the evaluations are confidential. Because no compelling reason has been demonstrated for withholding this information, we have no choice but to order the information released as required by section 552.302.⁴

We now address the submitted list. You claim that some of the home addresses and home telephone numbers of former employees contained in the list must be withheld under sections 552.102 and 552.117. Section 552.102 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101 of the Government Code. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Information is protected by common law privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id*; *see also* Open Records Decision No. 611 at 1 (1992). This office has determined that home addresses and home telephone numbers may be withheld on the basis of privacy only upon a demonstration of special circumstances that would render the information protected under this test. *See, e.g.*, Open Records Decision No. 123 at 5-6 (1976). There has been no such showing in this instance with respect to any of the information at issue. The address and telephone number information at issue is therefore not the type of information that is protected as private. You may not withhold this information under section 552.102.

However, among other information, section 552.117(1) of the Government Code excepts from public disclosure the home address and home telephone number of a current or former government employee, if the employee elected to withhold this information under section 552.024. Gov't Code § 552.117(1); *see id.* § 552.024. Whether information is protected under section 552.117(1) must be determined as of the time the information was requested. Open Records Decision No. 530 at 5 (1989). Thus, if the former employee

⁴ We caution that the distribution of confidential information constitutes a criminal offense. Gov't Code § 552.352. If you believe that the performance evaluations are confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

elected under section 552.024, prior to the request, to keep confidential his or her home address and/or home telephone number, you must withhold that information under section 552.117(1) of the Government Code. If no timely election under section 552.024 was made, then you may not withhold this information under section 552.117 of the Government Code, and it is subject to release.⁵

In summary, you must release under section 552.302 all responsive information that was not submitted for our review. You must also release the names of all former employees for the previous two school years, as well as the home addresses and telephone numbers of those employees who did not make a confidentiality election under section 552.024 prior to the district's receipt of the request.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

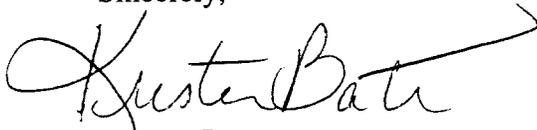
⁵ You also ask questions pertaining to what the district may charge the requestor. As noted below, questions relating to charges should be directed to Hadassah Schloss at the Texas Building and Procurement Commission.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Kristen Bates". The signature is fluid and cursive, with a long horizontal stroke extending to the right from the end of the name.

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 156973

Enc. Submitted documents

c: Mr. Guadalupe Olivarez, Jr.
Citrus Bay 262
Pharr, Texas 78577
(w/o enclosures)