



June 4, 2002

Mr. Steven T. Ramos  
Strasburger & Price, L.L.P.  
901 Main Street, Suite 4300  
Dallas, Texas 75202-3794

OR2002-3036

Dear Mr. Ramos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163845.

The Cedar Hill Independent School District (the "district"), which you represent, received a request for copies of five categories of a variety of information. You state, and provide documentation showing, that you have provided the requestor with some responsive information, to include information that is wholly responsive to request item 1 and partially responsive to request items 2 and 4. You claim, however, that portions of the remaining requested information, pertaining to portions of request items 2 and 4, are excepted from disclosure pursuant to sections 552.103, 552.107, and 552.117 of the Government Code, as well as rule 503 of the Texas Rules of Evidence. We have considered the exceptions you claim and have reviewed the submitted representative sample documents.<sup>1</sup> We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we note that the district provides documentation showing that a letter has been sent to the requestor requesting clarification of request items 3 and 5, as well as a portion of

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

request item 2. *See* Gov't Code § 552.222(b) (stating that 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). Based on our review of the information that has been submitted to us, it appears that the district received the requested clarification regarding these request items on April 10, 2002. Thus, the district had until April 12, 2002 to seek an opinion from us regarding any claim that the information that would be responsive to these particular request items was excepted from disclosure. *See* Open Records Decision No. 663 (1999) (providing for tolling of ten business day deadline for requesting attorney general decision while governmental body awaits clarification). However, as of the date of this letter, the district has not raised any exceptions to disclosure regarding any information that would be responsive to these particular request items. Thus, to the extent that the district maintains any information that is responsive to these items, we conclude that you must release such information to the requestor at this time. *See* Gov't Code §§ 552.006, .301, .302; *see also* Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You claim that some of the information that is responsive to the remaining portions of request item 2 is excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information that is responsive to a request may not be withheld from disclosure under section 552.117(1) if the employee did not request confidentiality in accordance with section 552.024 or if the request for confidentiality under section 552.024 was not made until after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You indicate that some district Board of Trustee members ("Board members") filed a confidentiality request pursuant to section 552.024 with respect to the information requested about each of them under request item 2. Thus, we understand you to assert that these Board members filed their respective confidentiality requests under section 552.024 prior to the district's receipt of the present request for information. Accordingly, we conclude that the district must withhold the home address and home telephone number of each of these Board members from disclosure pursuant to section 552.117(1) of the Government Code.

We note that the home e-mail address of each of these Board members which is responsive to the remaining portion of request item 2 is subject to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential and provides in pertinent part:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Accordingly, we conclude that the district must withhold the home e-mail address of each of these Board members from disclosure pursuant to section 552.137 of the Government Code, unless each Board member in question has affirmatively consented to the release of his or her respective home e-mail address.

You also claim that the information that you submitted regarding request item 4 is excepted from disclosure pursuant to section 552.107 of the Government Code. Section 552.107(1) protects information encompassed by the attorney-client privilege. We note that in instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and the client's confidences made to the attorney. *See Open Records Decision No. 574 (1990)*. Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In *Open Records Decision No. 574 (1990)*, this office concluded that section 552.107 excepts from disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *See Open Records Decision No. 574 at 5 (1990)*. Based on our review of your arguments and the information at issue, we agree that the information constitutes an attorney's legal advice or opinion provided in furtherance of the rendition of legal services to the client. Accordingly, the district may withhold the entirety of this information from disclosure pursuant to section 552.107 of the Government Code.

In summary, to the extent that the district maintains any information that is responsive to request items 3 and 5, or the portion of request item 2 that the district sought clarification on from the requestor, we conclude that the district must release such information to the requestor at this time. The district must withhold from disclosure, under section 552.117(1) of the Government Code, the home address and home telephone number of each of the Board members that requested confidentiality for this information under section 552.024 prior to the district's receipt of the present request. The district must withhold the home e-mail address of each of these Board members from disclosure pursuant to section 552.137 of the Government Code, unless each Board member in question has affirmatively consented to the release of his or her respective home e-mail address. The district may withhold from disclosure the entirety of the information that it submitted to us for review with regard to request item 4 pursuant to section 552.107 of the Government Code.

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).

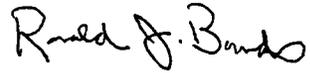
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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 "Ronald J. Bounds". The signature is written in a cursive style with a large initial "R".

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 163845

Enc. Submitted documents

cc: Mr. Edgar Linzy  
339 Trees Drive  
Cedar Hill, Texas 75104  
(w/o enclosures)