



August 15, 2002

Mr. Joe A. De Los Santos  
Walsh, Anderson, Brown, Schulze & Aldridge  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2002-4524

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167211.

The Odem-Edroy Independent School District (the “district”), which you represent, received a request for any information regarding the reassignment of Coach Chad Fox. You indicate that you have released most of the requested information to the requestor. You claim, however, that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code and Rule 503 of the Texas Rules of Evidence. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, we address the district’s obligations under section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You explain that the district received the present request for information on May 6, 2002. You state that on May 20, 2002, the tenth business day after receiving the present request, the district asked the requestor to clarify his request. *See Gov’t Code § 552.222* (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body). Thus, the ten-day time period to request a decision under section 552.301(b) with respect to the request was tolled on May 20, 2002. *See Gov’t Code § 552.301(b)*; *Open Records Decision No. 663 at 5 (1999)* (providing that ten-day period is tolled during the clarification process). You state that the requestor subsequently clarified his request by telephone and explained that he is seeking all information regarding the reassignment of Coach Chad Fox, including attorney-client communications. The ten-business-day time period began to run again on the date the department received this clarification from the requestor. However, as

you do not provide us with the date on which the district received this clarification, we are unable to determine whether the district sought a decision from this office prior to the expiration of a total of ten-business days. Thus, we are unable to conclude that the district complied with the requirements of section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.107 of the Government Code is a discretionary exception under the Public Information Act and does not demonstrate a compelling reason to withhold information from the public. *See, e.g.*, Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, none of the information may be withheld under sections 552.107(1) of the Government Code. On the other hand, section 552.101 of the Government Code does provide a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

You contend that the submitted information is protected by the attorney-client privilege and must therefore be withheld under section 552.101 of the Government Code in conjunction with Rule 503 of the Texas Rules of Evidence.<sup>1</sup> This office has found, however, that discovery and evidentiary rules are not confidentiality provisions for the purposes of section 552.101.<sup>2</sup> *See* Open Records Decision Nos. 575 (1990), 416 (1984). We acknowledge that the Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). The submitted documents, however, do not fall into the categories of information in section 552.022. Because the submitted information does not fall into a section 552.022 category, we conclude that the submitted information may not be withheld on the basis of Rule 503 of the Texas Rules of Evidence.

---

<sup>1</sup>Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

<sup>2</sup>We note that in Open Records Decision No. 574 (1990), this office determined that the statutory predecessor to section 552.107(1) is the appropriate section for a governmental body to cite when seeking to except from required public disclosure communications between the governmental body and its legal counsel. As discussed above, by failing to assert section 552.107 as an exception to disclosure within ten business-days of the system's receipt of the present request, the system waived this exception. *See* Open Records Decision No. 664 at 5 (1999).

We note, however, that the submitted information contains information that may be excepted under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the present request for this information was received. For any employee who timely elected to keep his or her personal information confidential, the district must withhold the employee's home address and telephone number, social security number, and any information that reveals whether the employee has family members. The district may not withhold this information under section 552.117 for an employee who did not make a timely election to keep the information confidential. Thus, we have marked the information in the submitted documents that must be withheld under section 552.117 for any employee who timely elected to keep his or her personal information confidential pursuant to section 552.024. The remaining information must be released.

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,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 167211

Enc: Submitted documents

c: Mr. Sean M Bowlin  
P.O. Drawer "B"  
San Patricio Publishing Company  
Sinton, Texas 78387-0167  
(w/o enclosures)