



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 5, 2003

Ms. Lisa B. Silvia
Paralegal
Fort Worth Independent School District
100 North University Drive, Suite NW 130
Fort Worth, Texas 76107

OR2003-1428

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176940.

The Fort Worth Independent School District (the "district") received three requests from the same requestor. The first request asks for (1) cellular telephone billing records pertaining to thirty-seven named current and former district employees, including all members of the district's office of special investigations, from 1990 to the present; (2) the total legal fees paid to each law firm engaged by the district during fiscal years 2000-2001 and 2001-2002; and (3) information pertaining to contracts granted to four named individuals and the law firm of Chappell, Hill, and Lowrance L.L.P. The second request asks for cellular telephone billing records pertaining to four additional district employees for the same period of time. The third request asks for (1) all long distance telephone billing records from the district's central administration building for the period of January 1, 2000 through November 30, 2002; (2) all documents stating the requestor's name, from December 1, 2001 to the present; (3) certain district policy documents pertaining to sex offenders; and (4) records pertaining to the classroom teaching experience of the district superintendent. You indicate that some of the named employees do not have district-issued cellular telephones. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.-San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You also indicate that the district will release some responsive cellular and long distance telephone billing information to the requestor. You

state that the information responsive to the remainder of the requests will be provided to the requestor. You claim, however, that telephone numbers in the requested cellular and long distance telephone billing records are excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.305 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ 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).

We must address the district's obligations under section 552.301 of the Government Code. Sections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Public Information Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

You indicate that the district received the first request on November 25, 2002. We received your request for a decision from this office on December 13, 2002. Based on the information provided, we determine that the district failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code. Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302.

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).

¹ 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.

You state that the requested information implicates the privacy interests of third parties. *See* Open Records Decision No. 630 (1994) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). We will therefore address your arguments under section 552.101 of the Government Code.²

As you acknowledge, the submitted telephone billing information is subject to required public disclosure under section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

The submitted telephone billing information consists of account information relating to the expenditure of public funds. Therefore, as prescribed by section 552.022, such information must be released unless it is confidential under other law. You contend that the requested information is protected by privacy.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note that telephone numbers are generally not protected under common-law privacy. *See* Open Records Decision No. 455 (1987) (absent special circumstances, home addresses and telephone numbers of private citizens generally not protected under Act’s privacy

² We note that you raise section 552.305 of the Government Code as an exception to disclosure. Section 552.305 states in relevant part that “[i]n a case in which information is requested under this chapter and a person’s privacy or property interests may be involved . . . a governmental body may decline to release the information for the purpose of requesting an attorney general decision.” Gov’t Code § 552.305 (emphasis added). Consequently, section 552.305 is not an exception to public disclosure under the Public Information Act (the “Act”). Rather, section 552.305 is a procedural provision permitting a governmental body to withhold information that may be private while the governmental body is seeking an attorney general’s decision under the Act. Because you believe the present request implicates the privacy interests of third parties, we will consider your privacy assertion pursuant to section 552.101 of the Government Code.

exceptions). However, this office has also determined that information that ordinarily would be subject to disclosure may be withheld under section 552.101 in conjunction with common-law privacy upon a showing of "special circumstances." *See, e.g.*, Open Records Decision 169 at 6-7 (1977) (describing special circumstances under which certain home addresses are private). This office considers "special circumstances" to refer to a very narrow set of situations, in which the release of information would likely cause a person to face "an imminent threat of physical danger." *Id.* at 6. Such special circumstances do not include "a generalized and speculative fear of harassment or retribution." *Id.*

In this case, you contend that the requestor has harassed and threatened district employees, and you believe that the requestor's harassing behavior will continue if the requested information is released. You have submitted a sample of alleged harassing communications sent by the requestor to district officials, agents, and employees for our review. You also state that the district has filed a lawsuit seeking protection from the requestor's actions. You inform us that the 153rd District Court of Tarrant County has issued a temporary restraining order against the requestor, and you have submitted a copy of the temporary restraining order for our review. Pursuant to the order, the requestor is restrained from contacting "[the district superintendent] or any Board member, employee, or official of the [district] by e-mail, letter, fax, or other form of communication." The order also prohibits the requestor from "[p]lacing unsolicited telephone calls, or e-mails to any person known by [the requestor] to be related to any person employed by [the district], in any capacity." Furthermore, the order prohibits the requestor from attending meetings of the district board of trustees, from entering district property without the written consent of the district, and from "[t]hreatening the physical safety of any student, parent, staff member, employee, or agent of [the district] at any place or time." The temporary restraining order states that "a serious risk exists that the staff, officials, agents, and teachers of the school may be subjected to defamation or physical attack" if the foregoing restrictions are not imposed while the district's lawsuit is pending. Based on the totality of the information you provided in this instance, we determine that you have established the presence of special circumstances sufficient to justify withholding some of the telephone numbers appearing in the telephone billing records at issue. Accordingly, we determine that the district must withhold the telephone numbers of students, parents, board members, officials, staff members, employees and agents of the district, as well as the telephone numbers of relatives of staff members and employees of the district, from the responsive records pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. As we are able to make this determination, we do not address your other arguments against the disclosure of these telephone numbers.

We also note that the submitted records contain account numbers that are subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

- (a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile

identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

We have marked a sample of the account numbers that the district must withhold pursuant to section 552.136 of the Government Code.

In summary, the district must withhold the telephone numbers of district students, parents, board members, officials, staff members, employees, agents, and relatives of staff members and employees contained in the responsive cellular and long distance telephone billing records from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. Account numbers must be withheld under section 552.136 of the Government Code. The remainder of the responsive telephone records must be released to the requestor.

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 Dep't of Pub. 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 176940

Enc: Submitted documents

c: Mr. Tom Purcell
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(w/o enclosures)