



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2003

Ms. Judith A. Hargrove
Linebarger, Goggan, Blair & Sampson, L.L.P.
P.O. Box 17428
Austin, Texas 78760

OR2003-5817

Dear Ms. Hargrove:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 186215.

The Cameron County Appraisal District (the "District"), which you represent, received a request for the following two categories of information:

1. [A]ll appraisals, including Market Values and Taxable Value for all residential properties within the City limits of Harlingen, Texas sold and/or reappraised in the past five (5) years (from 1998 to date). Please include all of Treasure Hills Subd.
2. [A]ll appraisal records including Market Value and Taxable Value for all residential property owned by [District] Employees within the City limits of Harlingen. You may exclude actual property addresses if you so desire.

Referencing sections 552.101 and 552.102 of the Government Code, you ask whether the District is legally obligated under the Act to reveal the names of employees who have elected to keep their home addresses confidential under section 552.024 of the Government Code. You express concern that revealing the employees' names in conjunction with other public information, such as account numbers, is tantamount to revealing their home addresses. We reviewed the information you submitted and considered your arguments.

Initially, we address the District's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The District received the present request for information on June 5, 2003. Therefore, you should have submitted to this office all information required by section 552.301(e) no later than June 26, 2003. The copies of the requested information you submitted have a Federal Express date stamp of July 2, 2003. *See* Act of May 27, 2003, 78th Leg., R.S., S.B. 919, § 1 (to be codified as an amendment to Gov't Code sec. 552.308). Accordingly, we conclude the District has not complied with the requirements of section 552.301 of the Government Code.

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). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because sections 552.101 and 552.102 can provide compelling reasons to overcome the presumption of openness, we will consider your arguments.

First, we note the District seeks to withhold the names of the employees who elected to keep their addresses confidential under section 552.024 of the Government Code. However, such information is not responsive to the request for appraisal records of all residential properties in Harlingen and of the District's employees. The appraisal records do not reveal who made section 552.024 elections.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This provision encompasses the doctrine of common-law privacy, which protects information when (1) it contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in the information. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Clearly, a District employee's

name is not highly intimate or embarrassing. Therefore, we conclude that the names of the employees do not warrant protection under common-law privacy.

Next, we address your arguments under section 552.102 of the Government Code. 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) (emphasis added). In this case, the District does not maintain the requested information in a personnel file. Therefore, the District may not withhold the submitted information under section 552.102 of the Government Code.

Last, we note the District’s implicit reliance on section 552.117 of the Government Code. Section 552.117(a)(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 timely request that this information be kept confidential under section 552.024 of the Government Code.¹ See Gov’t Code § 552.117(a)(1). 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). Personal information may not be withheld from disclosure under section 552.117(a)(1) if the employees did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 for the information was not made until after the District received the request for information.

Here, we note that the request for information does not implicate information concerning the individuals in their capacity as employees, but rather in their capacity as property owning members of the public. Further, other than addresses, the submitted information does not contain the types of information protected by section 552.117(a)(1). As the requestor specifically authorizes the District to withhold the employees’ addresses, the District need not release such information. Therefore, we conclude that none of the submitted information warrants protection under section 552.117 of the Government Code.²

¹ In Senate Bill 1388, which became effective on June 20, 2003, the Seventy-eighth Legislature recently amended section 552.117 of the Government Code by adding “(a)” to the relevant language of this provision. See Act of May 30, 2003, 78th Leg., R.S., S.B. 1388, § 1 (to be codified as an amendment to Gov’t Code sec. 552.117).

² We note your reference to section 25.025 of the Tax Code, which makes certain tax appraisal information of specified categories of individuals confidential. See Tax Code § 25.025; Act of May 31, 2003, 78th Leg., R.S., H.B. 2819, § 1 (to be codified as an amendment to Tax Code sec. 25.025(a)). The types of individuals contemplated by section 25.025 are essentially the same as those described in section 552.117 of the Government Code. In this instance, we assume section 25.025 does not apply because the District’s employees are not covered by this provision of the Tax Code.

In summary, the District has not established the applicability of section 552.101, 552.102, or 552.117 of the Government Code as exceptions to required public disclosure. Accordingly, the District must release the submitted information 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,

A handwritten signature in cursive script that reads "Christen Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 186215

Enc: Submitted documents

c: Mr. Daniel Serna
2530 Shofner Lane
Harlingen, Texas 78552-2264
(w/o enclosures)