



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 2, 2005

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

OR2005-04816

Dear Ms. Silvia:

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# 225439.

The Fort Worth Independent School District (the "district") received a request for information related to the Voyager Expanded Learning program. You indicate that you have provided, or will be providing, some of the requested information to the requestor. You also indicate that the district does not maintain some of the requested information. We note that the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that receives the request. *See Gov't Code* § 552.002(a); *Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989)*. We also note that this request seeks answers to several factual questions. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990)*. You claim that the remainder of the requested information, which you have submitted for our review, is excepted from disclosure under sections 552.101, 552.111, and 552.137 of the Government Code.¹ You also indicate that some of the requested information may implicate the proprietary interests of a third party. We have considered the exceptions you claim and reviewed the submitted information.

¹You indicate that some of the submitted information is not responsive to the instant request for information. Because this information is not encompassed by the request, we do not address it in this ruling. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

As a preliminary matter, we note that you have asked the requestor to clarify part of her request. A governmental body may ask a requestor to clarify a request. Gov't Code § 552.222(b); *see also* Open Records Decision Nos. 561 at 8 (1990), 333 (1982). However, a governmental body is required to make a good-faith effort to relate a request for information to any responsive information that is within its custody or control. *See* Open Records Decision No. 561 at 8-9 (1990). If the district holds information from which the requested information can be obtained, the district must provide that information to the requestor unless it is otherwise excepted from disclosure. In response to the request at issue here, you are required to make a good-faith effort to relate the request to information within the district's possession or control.

Next, we must address the district's obligations under section 552.301 of the Government Code. Subsections 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 [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 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). The submitted information indicates that the district received the instant request for information on March 8, 2005. You inform us that the district was closed from March 14, 2005 through March 18, 2005. Based on this information, the tenth business following the district's receipt of this request was March 29, 2005. However, you did not request a decision from this office until March 30, 2005. We therefore find that the district failed to comply with the procedural requirements of section 552.301 in requesting a ruling from this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of 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 section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Although you claim that some of the information at issue is excepted from disclosure under section 552.111 of the Government Code, we note that this provision is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally); 663 (1999) (governmental body may waive section 552.111). Your claim under section 552.111 is not a compelling reason for non-disclosure under section 552.302, and none of the submitted information may be withheld under this exception. *See* Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). However, because third party interests may be at stake and sections 552.101 and 552.137 can provide compelling reasons to withhold information, we will address the potential third party interests and your claims under these two exceptions.

First, you indicate that some of the submitted information may implicate the proprietary interests of a third party. A governmental body that believes that the release of information may implicate the proprietary interests of a third party must make a good-faith attempt to notify the third party of the request and of the third party's right to submit comments to attorney general. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Act in certain circumstances). As of the date of this ruling, we have not received comments from any third party regarding this request for information. Furthermore, you have not established that the information at issue is excepted from disclosure on the basis of any third party interests. We therefore find that the district may not withhold any of the submitted information from disclosure on the basis of any proprietary interest that any third party may have in the information.

Next, we address your claim under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy, which protects information if it: (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see*

Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the submitted records and marked a small amount of information that must be withheld pursuant to section 552.101 in conjunction with common-law privacy.

Lastly, we address your claim under section 552.137 of the Government Code. This section excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. We also note that section 552.137 does not apply to the general e-mail or web address of a company. The e-mail addresses that we have marked do not appear to be of a type specifically excluded by section 552.137(c). Therefore, in accordance with section 552.137, the district must withhold the e-mail addresses we have marked unless the district receives consent to release them.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must also withhold the e-mail addresses we have marked in accordance with section 552.137 of the Government Code unless the district receives consent to release them. The remaining submitted information 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, upon receiving this ruling, the governmental body

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 225439

Enc. Submitted documents

c: Ms. Betty Brink
Fort Worth Weekly
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(w/o enclosures)