



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2006

Mr. Phillip Marzec
Escamilla & Ponak, Inc.
Attorneys and Counselors
P. O. Box 200
San Antonio, Texas 78291-0200

OR2006-06784

Dear Mr. Marzec:

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# 252427.

The San Antonio Independent School District (the "district"), which you represent, received a request for all settlement agreements during the last eight years where the district paid money to the claimant.¹ You state that you have released some information, but claim that the highlighted portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.103, 552.117, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Pursuant to section 552.301(c) of the Government Code, in requesting a ruling from this office, a governmental body must submit to this office the requested information along with written comments explaining why the stated exceptions apply. *See* Gov't Code § 552.301(c). You did not submit any comments explaining why your claimed exceptions apply to the submitted

¹We note that the district informed the requestor that it would be providing to the requestor only drafts of the executed settlement agreements with redactions, but that the drafts "were executed with no changes of the terms." From our review of the submitted correspondence between the district and the requestor, we understand that the requestor agreed to accept the draft copies. *See* Gov't Code § 552.222 (providing that governmental body may ask requestor to clarify request). Accordingly, our ruling is limited to the unsigned drafts of the requested settlement agreements that have been provided to this office by the district as responsive to the request.

information. Consequently, you failed to comply with section 552.301(c) 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 a compelling reason exists for withholding 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). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under law. Open Records Decision No. 150 (1977). Section 552.103 of the Government Code is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. See Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 663 (1999); see also Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). In failing to comply with section 552.301, the district waived its claim under section 552.103, and none of the submitted information may be withheld on that basis. However, because sections 552.101, 552.102, 552.117, and 552.135 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of these exceptions.

The district claims section 552.102 of the Government Code for the highlighted portions of the submitted information. 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. Therefore, information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). As the privacy test for sections 552.102 and 552.101 are identical, we will address the district's privacy claims under sections 552.102 and 552.101 together.

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. Upon review, however, we find that none of the information in the submitted settlement agreements is confidential under common law privacy.

The district also claims that the highlighted names are subject to section 552.117 of the Government Code, which 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. Gov't Code § 552.117(a)(1). Upon review, however, we find that none of the information in the submitted settlement agreements is subject to section 552.117.

Section 552.135 provides in relevant part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a)-(b). Section 552.135 protects an informer's identity. Upon review, we find that you have failed to demonstrate that the submitted information identifies an informer. Thus, the district may not withhold any information under section 552.135. As you raise no other exceptions to disclosure, the submitted information must be released to the requestor in its entirety.

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); *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 Office of the Attorney General 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. 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 252427

Enc. Submitted documents

c: Mr. Brian Collister
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(w/o enclosures)