



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 31, 2007

Mr. John A. Kazen
Kazen, Meurer, & Perez L.L.P.
P.O. Box 6237
Laredo, Texas 78042-6237

OR2007-09697

Dear Mr. Kazen:

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# 285152.

The Laredo Independent School District (the "district"), which you represent, received a request for an anonymous letter regarding a specified individual that was distributed to the district's board members on May 4, 2007, as part of the Friday board packet. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld from the public under section 552.101 in conjunction with common-law privacy. *See Open Records Decision Nos. 393* (1983), 339 (1982); *cf. Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.— El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or

¹We note that the district also provided notice of this request for information to the individuals whose information is at issue. As of the date of this decision, this office has received no correspondence from the individuals in question. *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released).

embarrassing information and public did not have legitimate interest in such information). We have marked the information that is confidential under common-law privacy and that the district must withhold under section 552.101 of the Government Code. None of the remaining submitted information may be withheld under section 552.101 on this basis.

We note that some of the remaining information may be subject to section 552.117 of the Government Code.² Section 552.117(a)(1) excepts from disclosure the current and former 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). Whether information is protected by section 552.117(a)(1) 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 the information we have marked under section 552.117(a)(1) if the employee at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

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 personal information we have marked under section 552.117(a)(1) of the Government Code if the employee whose information is at issue timely elected confidentiality. The remaining submitted 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

²The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 285152

Enc. Submitted documents

c: Ms. Kirsten Crow
Laredo Morning Times
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(w/o enclosures)