



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 16, 2009

Mr. David M. Feldman  
Feldman Rogers  
Attorney for Fort Bend Independent School District  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2009-09806

Dear Mr. Feldman:

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# 349138.

The Fort Bend Independent School District (the "district"), which you represent, received a request for the following information: 1) a list of all individuals on the feasibility committee (the "committee"), including their contact information and their relationship with the district; 2) any agreements or contracts with a named individual currently within place or within the past three years; 3) all documentation presented to the committee and Board of Trustees regarding the "Global Science Center"; and 4) correspondence between the district and Houston Museum of Natural Science regarding a proposed partnership. You state you have no information responsive to categories two or four of the request.<sup>1</sup> You also state you have made some information available to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the

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<sup>1</sup>The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>3</sup>

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. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (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). This office has determined that other types of information also are private under section 552.101. *See Open Records Decision No. 659 at 4-5 (1999)* (summarizing information that attorney general has determined to be private).

The district argues that release of the addresses and telephone numbers of the committee members, which the district has marked, would be an invasion of the committee members' privacy. This office has concluded that public disclosure of an individual's home address and telephone number is not an invasion of privacy. *See Open Records Decision No. 554 at 3 (1990)*; *see also Open Records Decision No. 455 at 7 (1987)* (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). We also have stated that an expectation of privacy on the part of an individual who provides information to a governmental body does not permit the information to be withheld under section 552.101. *See Open Records Decision Nos. 479 at 1 (1987)* (information is not confidential simply because party that submitted the information anticipated or requested confidentiality), 180 at 2 (1977) (information not excepted from disclosure solely because the individual furnished it with the expectation that access to it would be restricted). Upon review, we find that none of the information at issue is highly intimate or embarrassing and not of legitimate public interest. We therefore conclude that the district may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

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<sup>2</sup>We note that the district has withdrawn its arguments under sections 552.111 and 552.117 of the Government Code.

<sup>3</sup>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.

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.317(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. Except for the e-mail address we have marked for release, the district must withhold the personal e-mail addresses that you have marked, as well as the additional e-mail address that we have marked, under section 552.137 unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

Lastly, we note that the district may be required to withhold some of the remaining information under section 552.117 of the Government Code.<sup>4</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. Thus, if the individual at issue timely elected to keep his personal information confidential, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. The district may not withhold the information we have marked under section 552.17(a)(1) if the individual at issue did not make a timely election to keep his personal information confidential.

In summary, except for the e-mail address we have marked for release, the district must withhold the personal e-mail addresses that you have marked, as well as the additional e-mail address that we have marked, under section 552.137 of the Government Code, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure. If the individual at issue timely elected confidentiality, then the district must withhold the personal information we have marked pursuant to section 552.117(a)(1) of the Government Code. The remaining submitted information must be released to the requestor.

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<sup>4</sup>Unlike other exceptions to disclosure under the Act, this office will raise section 552.117 on behalf of a governmental body, as this exception is mandatory and may not be waived. *See* Gov’t Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/rl

Ref: ID# 349138

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)