



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 26, 2010

Ms. Laura Rodriguez McLean
Walsh, Anderson, Brown, Gallegos & Green, P.C.
P.O. Box 168046
Irving, Texas 75016

OR2010-16171

Dear Ms. McLean:

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# 398151.

The Northside Independent School District (the "district"), which you represent, received a request for any electronic searches or notices to district staff or representatives resulting from six specified previous requests from the requestor, the results of any such searches or notices, an organization chart for the district's information technology department showing who handles responses to requests, and credentials to conduct such electronic searches. You state you will redact social security numbers pursuant to section 552.147 of the Government Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.102 and 552.107 of the Government Code.² We have considered your arguments and reviewed the submitted information, a portion of which consists of a

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

²Although you raise the attorney-client privilege under rule 503 of the Texas Rules of Evidence, we note section 552.107 is the proper exception to raise for your attorney-client privilege claim in this instance. See Open Records Decision No. 676 (2002).

representative sample.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's assertion the district failed to meet its obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) provides the governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D).

You state the district received the request on August 3, 2010, and you provide a copy of the request stamped "RECEIVED NORTHSIDE ISD SUPERINTENDENT'S OFFICE." The stamp does not have a legible date. Further, the requestor claims, and provides an online confirmation printout and a certified mail return receipt showing, the district received the request on August 2, 2010. Accordingly, the district's ten-business-day deadline was August 16, 2010, and the fifteen-business-day deadline was August 23, 2010. The district did not submit its request for a ruling from this office until August 17, 2010, and it did not submit comments explaining why the stated exceptions apply or a copy or representative sample of the information requested until August 24, 2010. Consequently, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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. 630 (1994). The presumption information is public under section 552.302 can be

³We assume 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 those records contain substantially different types of information than that submitted to this office.

overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision No. 150 (1977). Although you raise section 552.107 of the Government Code as an exception to disclosure of the information at issue, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 630 at 4 (governmental body may waive attorney-client privilege, section 552.107(1)). Accordingly, the district may not withhold any of the submitted information pursuant to section 552.107 of the Government Code. However, because section 552.102 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the submitted information.

Next, you inform us a portion of the submitted information, which you have marked, is not responsive to the present request because it relates to previous requests. We also note a portion of the submitted information, which we have marked, is not responsive because it was created after the date the district received the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release non-responsive information.

You seek to withhold part of the submitted transcript of a district information technology department employee under section 552.102(b) of the Government Code. Section 552.102(b) excepts from public disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). We must consider whether the Legislature intended the term "professional public school employee" in section 552.102(b) to include a district information technology department employee.

Section 552.102(b) does not define "professional public school employee." When construing a statute, a court may consider the circumstances under which the Legislature enacted the statute as well as its legislative history. *Id.* § 311.023(2), (3); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 626 n.6 (Tex. 2008). In 1989, the Legislature passed Senate Bill 404 ("S.B. 404"), as an amendment to the Act to include the statutory predecessor to section 552.102(b). The Senate sponsor of S.B. 404, Senator Don Henderson, stated before the Senate Committee for State Affairs that the bill was a response to "people trying to get past a teacher's degree, past a teacher's hiring, . . . [and] past a school board's determination that a teacher was qualified to teach[.]" Hearing on S.B. 404 Before the Senate Comm. for State Affairs, 71st Leg., R.S. (February 27, 1989) (statement of Senator Henderson) (recording available from Senate Staff Services). During the Senate floor debate of the bill, Senator Henderson further questioned the purpose of "any citizen being able to look at any teacher's transcript" because "there are several other means by which we say teachers are qualified to teach in this state." *Id.*; *see also* Debate on Tex. S.B. 404 on the Floor of the Senate, 71st Leg., R.S. (March 13, 1989) (statement of Senator Henderson describing

S.B. 404 as relating to privacy of a teacher's transcript; statement of Senator Caperton summarizing S.B. 404 as balancing public's right to know with teacher's right of privacy) (recording available from Senate Staff Services). In addition, Representative Paul J. Hilbert, the House sponsor of S.B. 404, stated during the debate on the House floor that the statute was intended to protect teachers' college transcripts. *See* Debate on Tex. S.B. 404 on the Floor of the House, 71st Leg., R.S. (May 10 and 11, 1989) (statements of Representative Hilbert introducing S.B. 404 as applying to transcripts of teachers) (recording available from House Video/Audio Services); *see also* Hearing on S.B. 404 Before the House Comm. for State Affairs, 71st Leg., R.S. (April 3, 1989) (statement of Representative Hilbert noting S.B. 404 would allow public access to curriculum, but not grades, in school teacher's transcript) (recording available from House Video/Audio Services). Furthermore, the House Research Organization ("HRO") analysis of the bill states S.B. 404 was introduced after this office ruled "college transcripts of public school teachers" are public under the Act. *See* Tex. House Research Organization, Bill Analysis, Tex. S.B. 404, 71st Leg., R.S. (1989) at 1. According to the HRO analysis, prior to this legislation, questions had arisen regarding "access to an educator's college transcript" and S.B. 404 was intended to "clarify that . . . certain . . . data in the college transcript of a public school teacher or administrator" is excepted from the Act. *Id.* at 2-3. Moreover, the Senate Committee on State Affairs background analysis of S.B. 404 refers to a lawsuit that resulted when a school district "refused to release the transcript of one of its teachers." *See* Senate Committee on State Affairs, Bill Analysis, S.B. 404, 71st Leg. (1989) (discussing S.B. 404 in context of "methods to evaluate teacher/administrator qualifications"); *see Klein Indep. Sch. Dist. v. Mattox*, 830 F.2d 576 (5th Cir. 1987) (affirming "right of the public to know the academic records of the schoolteachers of their children"), *Houston Chronicle Publ'g Co. v. Mattox*, 767 S.W.2d 695 (Tex. 1989) (ordering attorney general to rule on whether transcripts of Houston Independent School District administrators were public under the Act). Thus, when S.B. 404 was enacted, the question of the confidentiality of the transcripts of just public school educators, rather than all employees, had been before both this office and the courts. Therefore, we believe the legislative history of section 552.102(b) shows the Legislature enacted the predecessor statute to section 552.102(b) to protect the transcripts of only professional educators, rather than the transcripts of all public school employees. *See* Open Records Decision No. 526 (1989) (addressing predecessor statute in light of previous lack of exception for "qualifications of professional public school employees to teach") (emphasis added).

Therefore, as you have not established the information technology department employee is an educator for purposes of section 552.102(b), this exception is not applicable to the submitted transcript. Accordingly, the district may not withhold the information you have marked under section 552.102(b) of the Government Code. *See* Open Records Decision Nos. 470, 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees). As you raise no other exception to disclosure, the district must release the responsive information in its entirety.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 398151

Enc. Submitted documents

c: Requestor
(w/o enclosures)