



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 25, 2011

Ms. Laura Rodriguez McLean  
Attorney for Coppell Independent School District  
Walsh, Anderson, Brown, Gallegos and Green, PC  
909 Hidden Ridge Drive, Suite 410  
Irving, Texas 75038

OR2010-01279

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# 406943.

The Coppell Independent School District (the "district"), which you represent, received a request for all documents relating to a named student or her parents, and all documents relating to the training and credentials of district employees involved with the student. You assert that the request is not a request for public information under the Act. In the alternative, you claim that portions of the submitted information are excepted from disclosure under sections 552.102, 552.103, 552.117, and 552.137 of the Government Code. We have considered the claimed exceptions and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we address your claim that the present request is not a request for information under the Act. You state that after the district received this request, the requestor initiated a due process hearing before the Texas Education Agency. You state that discovery methods in a due process hearing are "limited to those specified in the Administrative Procedure Act ("APA"), Texas Government Code, Chapter 2001 . . . [and] discovery between parties engaged in a contested case such as the one at issue here is conducted under the Texas Rules of Civil Procedure." You assert that because legal authority already exists which governs

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<sup>1</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.

the production of documents, the request is not subject to the Act. Section 552.0055 of the Government Code provides that “[a] subpoena duces tecum or a request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure is not considered to be a request for information under this chapter.” *Id.* § 552.0055. However, this section does not apply in all instances in which a governmental body could have received such a subpoena or discovery request. *See Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865-66 (Tex. 1999) (in interpreting statutes, goal of discerning legislature’s intent is served by beginning with statute’s plain language because it is assumed that legislature tried to say what it meant and its words are therefore surest guide to its intent); *see also City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 324 (Tex. App.—Austin 2002, no pet.) (citing *Sorokolit v. Rhodes*, 889 S.W.2d 239, 241 (Tex.1994)) (“In applying the plain and common meaning of a statute, [one] may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, especially when [one] can discern the legislative intent from a reasonable interpretation of the statute as it is written.”). You do not assert that the instant request is in fact a “request for discovery that is issued in compliance with a statute or a rule of civil or criminal procedure.” Gov’t Code § 552.0055. The requestor states that her request is made under the Texas Public Information Act. Although discovery in a contested case is conducted under the Texas Rules of Civil Procedure, there is nothing that prevents the requestor from also submitting a request for information under the Act. Therefore, we find the district received a request for information under the Act, and we will address your arguments against disclosure of the submitted information under the Act.

We next note that you have submitted a representative sample of information responsive only to the last two parts of the request, relating to the training and credentials of district employees. To the extent information relating to the named student and her parents existed on the date the district received the request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov’t Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure

under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body receives the request for information, and (2) the information at issue is related to that litigation. *See Thomas v. Cornyn*, 71 S.W.3d 473, 487 (Tex. App.—Austin 2002, no pet.); *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551 at 4.

Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

Although you provide documentation establishing that the requestor filed a Request for Due Process Hearing with the Texas Education Agency, you acknowledge this request was not filed until after the district received the instant request for information. *See* Gov't Code § 552.103(c). Accordingly, we find the district was not involved in pending litigation at the time of the request. Furthermore, you contend that litigation related to the requested information was reasonably anticipated because "the district understood requestor and her spouse would be pursuing all avenues to have their concern addressed." However, you have not provided any concrete evidence that, prior to the receipt of the request, the requestor actually took any objective steps toward filing suit against the district. *See* Open Records Decision No. 331 (1982). Thus, we find that you have not demonstrated that the district reasonably anticipated litigation on the date of its receipt of the request. Accordingly, the district may not withhold any of the submitted information under section 552.103.

Section 552.102 of the Government Code 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). This exception further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, with the exception of the employees’ names, courses taken, and degrees obtained, the district must withhold the submitted transcripts under section 552.102(b) of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential pursuant to section 552.024. *See* Gov’t Code §§ 552.117(a)(1), .024(b). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time the governmental body receives 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 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. You have marked information to be withheld under section 552.117. We have marked additional information that is subject to this section. If the employees to whom the marked information pertains timely requested confidentiality under section 552.024, then the district must withhold it under section 552.117(a)(1). If the employees did not timely elect to withhold their personal information, then the district may not withhold that information under section 552.117.<sup>2</sup>

Section 552.137 of the Government Code 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 a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address you have marked is not specifically excluded by section 552.137(c). We have marked an additional e-mail address that is subject to this section. Thus, the district must withhold the marked e-mail addresses under section 552.137, unless the owners of the addresses have affirmatively consented to their release.<sup>3</sup> *See id.* § 552.137(b).

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<sup>2</sup> As you acknowledge, the information contains social security numbers. Regardless of whether a timely confidentiality election was made pursuant to section 552.024, section 552.147(b) authorizes a governmental body to redact a living person’s social security number without requesting an opinion from this office. *See* Gov’t Code § 552.147(b).

<sup>3</sup> We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Finally, you note that some of the submitted information is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the district must withhold (1) the higher education transcripts under section 552.102(b), with the exception of the employees' names, courses taken, and degrees obtained, (2) the information marked under section 552.117, if the employees at issue timely requested confidentiality under section 552.024, and (3) the marked e-mail addresses under section 552.137. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

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, toll free at (888) 672-6787.

Sincerely,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID# 406943

Enc. Submitted documents

c: Requestor  
(w/o enclosures)