



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2014

Ms. Christie Hobbs
Counsel for the Duncanville Independent School District
Leasor Crass, P.C.
201 East Debbie Lane
Mansfield, Texas 76063

OR2014-04344

Dear Ms. Hobbs:

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# 516801.

The Duncanville Independent School District (the "district"), which you represent, received a request for information related to the electrical services between TXU Energy and the district, to include: the competitive solicitation that resulted in the contract for electrical services; agenda, minutes, back up materials, resolutions, and orders of the district's Board of Trustees and draft contracts and other materials relating to the electric utility service contracts from 2007 to 2013; the original and subsequent electrical supply contracts between the district and TXU Energy beginning in 2009; all notes, emails, and documents related to the original and subsequent electrical supply contracts beginning in 2009; and all documents related to a specified individual seeking to enter into contract with TXU Energy. You state you are releasing some information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503. We have considered your arguments and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from disclosure. Section 552.301(e) provides in pertinent part that a governmental body that requests an

attorney general decision must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request for information, submit to the attorney general: (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date; and (4) a copy of the specific information requested or representative samples of the information, if a voluminous amount of information was requested, labeled to indicate which exceptions apply to which parts of the information. *See* Gov't Code § 552.301(e)(1)(A)-(D). You state the district received the request on December 5, 2013. You explain the district was closed December 6, 2013, and December 9, 2013, due to inclement weather. You also state the district was closed December 21, 2013, through January 5, 2014. Therefore the fifteen-day deadline for the district was January 13, 2014. However, the written comments stating the reasons why the stated exceptions apply and the responsive information was mailed in an envelope that does not bear a postmark date. Further, you have not furnished satisfactory proof the information was deposited in the mail within the fifteen-business-day deadline. Therefore, our office has no evidence that is sufficient to establish the district provided the information required under section 552.301(e) to our office within fifteen business days of receiving the request for information. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we conclude the district failed to comply with the procedural requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.103, 552.107, and 552.111 of the Government Code and Texas Rule of Evidence 503 are all discretionary in nature; they serve only to protect a governmental body's interests. As such, the district's claims under these sections and privilege are not compelling reasons to overcome the presumption of openness. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver), 677 at 10 (2002) (attorney work-product privilege under section 552.111 is not compelling reason to withhold information under section 552.302); *see also* Open Records Decision No. 522

(1989) (discretionary exceptions in general). Therefore, the district may not withhold the submitted information pursuant to these exceptions and privilege. Sections 552.117, 552.136, and 552.137 of the Government Code can, however, provide compelling reasons to overcome the presumption of openness.¹ Therefore, we will address the applicability of these sections to the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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 of the Government Code. Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 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 information under section 552.117 on behalf of current or former officials or employees who made requests for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). The remaining information contains the cellular telephone numbers of district employees. To the extent the employees at issue timely elected to keep such information confidential under section 552.024 and the cellular telephone service is not paid for by a governmental body, the district must withhold the telephone numbers we have marked under section 552.117(a)(1) of the Government Code. If the employees at issue did not make timely elections under section 552.024 or the cellular telephone service is paid for by a governmental body, the district may not withhold the telephone numbers we have marked under section 552.117(a)(1) of the Government Code.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). Upon review, we find the utility service account numbers in the responsive information constitute access device numbers for purposes of section 552.136. Accordingly, we find the district must withhold the utility service account numbers under section 552.136 of the Government Code.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.137 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 of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). 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. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs affirmatively consents to its public disclosure. *Id.* § 552.137(b). We note subsection 552.137(c) provides subsection 552.137(a) does not apply to an e-mail address provided to a governmental body by a person who has or seeks a contractual relationship with the governmental body or by the contractor’s agent. *Id.* § 552.137(c)(1)-(2). Because we are unable to discern whether the e-mail addresses within the responsive documents fall within the scope of section 552.137(c), we must rule conditionally. To the extent the e-mail addresses at issue belong to members of the public, the district must withhold such e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release.² However, to the extent the e-mail addresses at issue are excluded by section 552.137(c), the e-mail addresses may not be withheld under section 552.137 of the Government Code.

We note some of the submitted information may be 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.

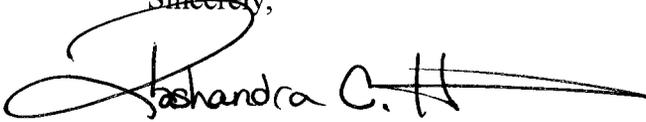
In summary, the district must withhold the cellular telephone numbers we have marked under section 552.117(a)(1) of the Government Code, to the extent the employees at issue timely elected to keep such information confidential under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body. The district must withhold the utility service account numbers under section 552.136 of the Government Code. The district must withhold any personal e-mail addresses in the responsive information under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their release or the e-mail addresses are excluded by subsection 552.137(c) of the Government Code. The remaining information must be released; however, any information protected by copyright may only be released in accordance with copyright law.

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Rashandra C. Hayes", with a long horizontal flourish extending to the right.

Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

Ref: ID# 516801

Enc. Submitted documents

c: Requestor
(w/o enclosures)