



January 13, 2015

Ms. Lori J. Robinson
Staff Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703

OR2015-00635

Dear Ms. Robinson:

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# 549895.

The Austin Independent School District (the "district") received a request for all paid or outstanding statements, invoices, or bills to specified individuals or law firms during a specified time period. You indicate the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also received and considered comments from the requestor. *See*

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>

²We 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 that those records contain substantially different types of information than that submitted to this office.

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 contention the district failed to comply with the procedural requirements of the Act in requesting a ruling from this office. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(d), the governmental body must provide the requestor, within ten business days after the date of its receipt of the request for information, (1) a statement the governmental body has asked for a decision from the attorney general and (2) a copy of the governmental body's written communication to the attorney general asking for a decision. *See id.* § 552.301(d). In this instance, the district received the request for information on October 16, 2014. Thus, the ten-business-day deadline to provide information to the requestor pursuant to section 552.301(d) was October 30, 2014. The district provided a statement to the requestor that it was seeking a decision from our office by the ten-business-day deadline. *See id.* 552.301(d)(1). However, the requestor submitted the envelope in which she received the copy of the district's written communication to our office as required by section 552.301(d)(2). The envelope bears the post mark of November 4, 2014. *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 find the district failed to comply with the procedural requirements mandated by section 552.301(d)(2) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to provide the requestor with information required in section 552.301 results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Gov't Code* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Although you raise section 552.107 as an exception to disclosure, this section is a discretionary exception that protect a governmental body's interests and may be waived. Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) and rule 503 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.107 does not constitute a compelling reason to withhold information for purposes of section 552.302, and the district may not withhold the responsive information under section 552.107. However, because section 552.101 of the Government Code can provide a compelling reason to withhold information, we will consider the applicability of this section to the submitted information.

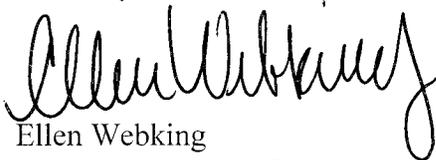
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't

Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Upon review, you have not demonstrated how any of the submitted information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district may not withhold any of the submitted information under section 552.101 in conjunction with common-law privacy. The submitted information must be released.

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,



Ellen Webking
Assistant Attorney General
Open Records Division

EW/ac

Ref: ID# 549895

Enc. Submitted documents

c: Requestor
(w/o enclosures)