



January 20, 2015

Ms. Jeanne C. Collins
General Counsel
El Paso Independent School District
6531 Boeing Drive
El Paso, Texas 79925

OR2015-01088

Dear Ms. Collins:

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# 550514 (EPISD ORR# 2014.454).

The El Paso Independent School District (the "district") received a request for information concerning a specified incident report. You claim the submitted information is excepted from disclosure under sections 552.102, 552.108, 552.117, and 552.135 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's responsibilities in timely requesting a ruling from this office. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow when asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the applicable exceptions within ten business days after receiving the request. *See* Gov't Code § 552.301(b). The district received the request on October 14, 2014. Its ten-business-day deadline to request a ruling from this office was October 28, 2014. The district's request for a ruling was postmarked on 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). Thus, we conclude the district failed to comply with the requirements of section 552.301 in asking this office for a ruling.

¹Although you do not state section 552.102 as an exception, we understand you to raise it based on the content of your markings.

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 the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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) (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). 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). Section 552.108 of the Government Code does not provide a compelling reason to withhold the information at issue. *See Gov't Code* § 552.007; Open Records Decision Nos. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the district may not withhold the submitted information under section 552.108 of the Government Code. Sections 552.102, 552.117, and 552.135 make information confidential and can provide compelling reasons not to disclose information to the public. Therefore, we will consider the applicability of sections 552.102, 552.117, and 552.135 of the Government Code.

You claim some of the submitted information is excepted from disclosure under sections 552.102(a) and 552.117(a)(1) of the Government Code. Section 552.102(a) excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Gov't Code* § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Section 552.117(a)(1) 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)(1). However, sections 552.102 and 552.117 are applicable only to information the district holds in an employment context. Upon review, we find the district does not maintain the submitted incident report in an employment capacity. Therefore, the district may not withhold any of the submitted information under section 552.102 or 552.117 of the Government Code.

Section 552.135 of the Government Code provides:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

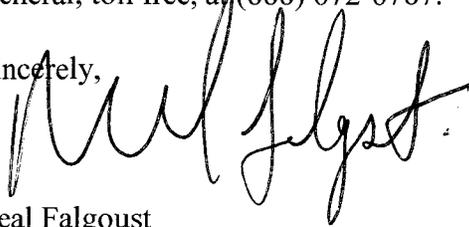
(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Id. § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under this exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.135, .301(e)(1)(A). Section 552.135 protects the identity of an informer but does not protect witness information or statements. You state some of the submitted information consists of the name or personally identifiable information of a former district employee who reported a possible violation of section 42.01 of the Penal Code, relating to disorderly conduct. Upon review, we conclude the district must withhold the information we marked under section 552.135 of the Government Code. The remaining information does not identify an informer and the district may not withhold it under section 552.135. As you raise no other exceptions, the district must release the remaining information.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/bhf

Ref: ID# 550514

Enc. Submitted documents

c: Requestor
(w/o enclosures)