



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 8, 2016

Mr. Steven J. Blanco
Counsel for Socorro Independent School District
Blanco Ordoñez Mata & Wallace, P.C.
5715 Cromo Drive
El Paso, Texas 79912

OR2016-20310

Dear Mr. Blanco:

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# 628094.

The Socorro Independent School District (the "district"), which you represent, received a request for a specified internal audit, including notes and results. You state the district has released some responsive information. You claim the submitted information is excepted from disclosure under sections 552.116 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Initially, you state some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2016-19631 (2016). In that ruling, we determined the district may withhold the information at issue under section 552.103 of the Government Code. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the district may continue to rely on Open Records Letter No. 2016-19631 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination).

We will consider the district's arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2016-19631.

Next, we address the assertion of the requestor that the district failed to comply with the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). The district states it received the request for information on June 22, 2016. However, the requestor asserts, and has submitted a time-stamped copy of the request showing, the district received the request after business hours on June 16, 2016. The determination of when a governmental body received a request is a question of fact. This office cannot resolve disputes of fact in its decisional process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Where a factual issue cannot be resolved as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our opinion, or upon those facts that are discernible from the documents submitted for our inspection. ORD 552 at 4. Upon review of the documents at issue, we find the district received the request after business hours on June 16, 2016. Thus, the district received the request on June 17, 2016. The district informs us it was closed from June 27, 2016, through July 8, 2016. This office does not count the date the request was received or the dates the governmental body was closed as business days for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the ten-business-day deadline was July 15, 2016. However, the district submitted the information required under section 552.301(b) in an envelope bearing a postmark of July 20, 2016. *See id.* § 552.308(a)(1) (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 section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists 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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). The district claims section 552.116 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as a result, it does not constitute a compelling reason to withhold information. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary

exceptions). Accordingly, the district may not withhold any portion of the remaining information under section 552.116 of the Government Code. However, the district also claims section 552.117 of the Government Code for some of the remaining information. This section makes information confidential and thus, can provide a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of this section to the remaining 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)(1). 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 a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, if the individuals did not timely request confidentiality under section 552.024, then the district may not withhold this information under section 552.117(a)(1). Further, we find you have failed to demonstrate section 552.117 is applicable to any of the remaining information. Therefore, the district may not withhold any of the remaining information under section 552.117 of the Government Code.

In summary, the district may continue to withhold the identical information in accordance with Open Records Letter No. 2016-19631. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.¹

¹We note the requestor has a special right of access to her home telephone number being released. *See* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates or person's agent on grounds that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). If the district receives another request from a different requestor, section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). If a governmental body redacts such information, then it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2).

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 "B. Berger", written over the typed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/akg

Ref: ID# 628094

Enc. Submitted documents

c: Requestor
(w/o enclosures)