



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 13, 2004

Mr. Richard A. Peebles
Attorney at Law
4001 Garth Road, Suite 107
Baytown, Texas 77521-3115

OR2004-1092

Dear Mr. Peebles:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199319.

The Goose Creek Consolidated Independent School District (the "district"), which you represent, received a request for a list of the district's school bus drivers and any traffic violations they received in the past five years. The district claims the requested information is excepted from public disclosure under sections 552.101 and 552.102 of the Government Code.

Section 552.102 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, we will consider your section 552.101 and section 552.102 claims together.

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation*. In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the

information is not of legitimate concern to the public. *Id.* at 685. After reviewing the submitted information, we conclude it is not highly intimate or embarrassing, and the information is of legitimate concern to the public. Thus, the district may not withhold the information under section 552.102.

Next, the district contends the information is confidential under sections 411.085 and 411.097 of the Government Code. These statutes prohibit the release of criminal history record information ("CHRI"). *See* Gov't Code §§ 411.085 (it is an offense to release CHRI), .097(d) (CHRI obtained by a school district may not be released). However, the definition of CHRI does not include driving record information. *Id.* § 411.082(2)(B). The district has submitted driving records as responsive to the request. Because driving record information is not CHRI, sections 411.085 and 411.097 are inapplicable, and the district may not withhold the information pursuant to these statutes.

The information includes motor vehicle information excepted from disclosure under section 552.130. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the Texas drivers' license numbers, license types or classes, license restrictions and endorsements, and license expiration dates under section 552.130.

Section 552.117(a)(1) may also be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, 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. 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 a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the district must withhold the employees' home addresses. The district may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. We note that post office boxes are not home addresses and are not protected under section 552.117.

In summary, the district must withhold the Texas drivers' license numbers, license types or classes, license restrictions and endorsements, and license expiration dates under section 552.130 and the employees' home addresses under section 552.117(a)(1) if they timely elected to withhold this information under section 552.024. The district must release the remaining information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

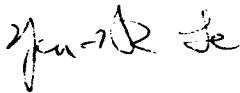
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 199319

Enc: Submitted documents

c: Ms. Keri Mitchell
Baytown Sun Reporter
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(w/o enclosures)