



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 20, 2016

Ms. Ylise Janssen  
General Counsel  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

OR2016-11645

Dear Ms. Janssen:

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# 615588.

The Austin Independent School District (the "district") received a request for all documents relating to a "tax swap" between the City of Austin and the district. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we must address the district's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the

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<sup>1</sup>Although you raise section 552.101 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the requested information. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>We assume that 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.

governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). You state the district received the request for information on March 28, 2016. You do not inform us the district was closed for business on any of the days at issue. Accordingly, the district's ten-business-day deadline was April 11, 2016. However, the district submitted the information required under section 552.301(b) in an envelope bearing a postmark of April 15, 2016.<sup>3</sup> *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). You claim sections 552.107 and 552.111 of the Government Code for the submitted information. However, these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as a result, they do not constitute compelling reasons to withhold information. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Accordingly, the district may not withhold any portion of the submitted information under section 552.107 or section 552.111 of the Government Code. However, we note section 552.117 of the Government Code is applicable to some of the submitted information.<sup>4</sup> Section 552.117 can provide a compelling reason to overcome the presumption of openness. Therefore, we will address the applicability of this section to the submitted information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family

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<sup>3</sup>Although you state the district submitted its 10-day letter to this office on April 8, 2016, we never received this correspondence. We only received a copy of this letter as part of the district's 15-day submission of April 15, 2016.

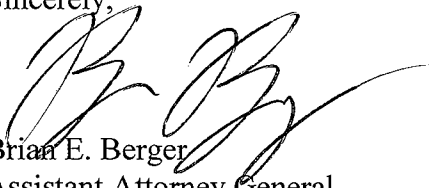
<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

member information of current or former employees or officials of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service was not paid for by a governmental body, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individual whose information is at issue did not timely request confidentiality under section 552.024 or the cellular telephone service was paid for by a governmental body, the district may not withhold the information we have marked under section 552.117(a)(1) of the Government Code. In any case, the remaining 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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 615588

Enc. Submitted documents

c: Requestor  
(w/o enclosures)