



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 27, 2016

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Harry F. Wright, Jr.
School Attorney
Bryan Independent School District
101 North Texas Avenue
Bryan, Texas 77803

OR2016-28427

Dear Mr. Wright:

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# 639445.

The Bryan Independent School District (the "district") received seven requests from the same requestor for several categories of information pertaining to two former district employees and information pertaining to a specified incident at a specified location, including the incident report, video recordings, and disciplinary actions taken.¹ You state the district is withholding student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You also state

¹You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student 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 FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>

the district will release some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code and privileged under rules 408 and 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure.³ Additionally, you state, and provide documentation showing you have notified the two former employees of their rights to submit comments to this office why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from a representative of one of the former employees (the "representative") and from an attorney on behalf of the requestor.⁴ *See id.* We have considered the submitted arguments and reviewed the submitted information.

Initially, the representative argues some of the submitted information is not subject to the Act. The Act applies to "public information," which is defined in section 552.002(a) of the Government Code as

information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

³Although you raise section 552.101 of the Government Code in conjunction with rules 408 and 503 of the Texas Rules of Evidence and Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, while you also raise section 552.101 of the Government Code in conjunction with section 552.103 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found in the Act. *See* ORDs 676 at 1-2, 575 at 2. Accordingly, we do not address your arguments under section 552.101 of the Government Code in conjunction with these provisions. Additionally, although you raise rule 192.5 of the Texas Rules of Civil Procedure, we note the proper exception to raise when asserting the attorney work product privilege for information not subject to section 552.022 of the Government Code is section 552.111 of the Government Code. *See* Open Records Decision Nos. 677 (2002), 676 at 6.

⁴As of the date of this letter, this office has not received comments from the remaining former employee explaining why any of the submitted information should not be released.

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Information is "in connection with the transaction of official business" if it is "created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a government function on behalf of a governmental body, and pertains to official business of the governmental body." *Id.* § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The representative asserts portions of the submitted information consist of recordings that do not concern the official business of the district. The representative argues the recordings were not authorized by the district or the former employee he represents, and thus, these recordings do not constitute public information as they were "not gathered or maintained in connection with the transaction of official business." Further, the representative states "it was not the common practice of the [d]istrict to record meetings of this nature." We note, however, the information at issue is maintained by the district and pertains to a personnel matter concerning the district. Thus, we find the information at issue is maintained in connection with the transaction of official business. Consequently, the information at issue is public information under section 552.002 that must be released unless it falls within an exception to public disclosure. *See* Gov't Code §§ 552.002, .021. Accordingly, we will consider the submitted arguments against disclosure of this information.

The representative claims Exhibit 8 is exempted from disclosure under chapter 551 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses section 551.104 of the Government Code. Section 551.104 provides, "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). Thus, such information cannot be released in response to an open records request. *See* Attorney General Opinion JM-995 at 5-6 (1988) (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). However, other than certified agendas and tape recordings, records relating to closed meetings are not expressly made confidential by chapter 551 of the Government Code. *See, e.g.,* Open Records Decision No. 485 at 6 (1987) (investigative report not excepted from disclosure under statutory predecessor to section 552.101 simply by virtue of its having been considered in executive session); *see also* Open Records Decision No. 658 at 4 (1998) (statutory confidentiality provision must be express, and confidentiality requirement will not be implied from statutory structure), 649 at 3 (1996) (language of confidentiality provision controls scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to public). The representative asserts Exhibit 8 is confidential under section 551.104 because, due to the substantive content of the

recording, any discussion between the district's Board of Trustees and the individual he represents should have occurred in a closed session unless the individual he represents elected for it to occur in open session. However, Exhibit 8 does not contain a certified agenda or tape of a closed meeting. Therefore, Exhibit 8 is not confidential pursuant to section 551.104 of the Government Code and the district may not withhold it under section 552.101 of the Government Code on that basis.

You state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2016-27954 (2016) and 2016-28411 (2016). We have no indication there has been any change in the law, facts, or circumstances on which the previous rulings were based. Accordingly, we conclude the district may rely on Open Records Letter Nos. 2016-27954 and 2016-28411 as previous determinations and withhold or release the identical information in accordance with those rulings. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note the submitted information contains information that is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information includes a completed report that is subject to section 552.022(a)(1). The district must release the completed report pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or is made confidential under the Act or other law. *See id.* You seek to withhold the information at issue under sections 552.107(1) and 552.111 of the Government Code. However, sections 552.107(1) and 552.111 are discretionary and do not make information confidential under the Act. *See* Open Records Decision Nos. 677 (2002) (governmental body may waive attorney work product privilege under section 552.111), 676 at 10-11 (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). Therefore, the district may not withhold the information subject to section 552.022(a)(1), which we have marked, under section 552.107 or section 552.111 of the Government Code. However, the Texas Supreme Court has held the Texas Rules of Evidence are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will address your claim of

the attorney-client privilege under rule 503 of the Texas Rules of Evidence and the attorney work product privilege under rule 192.5 of the Texas Rules of Civil Procedure for the information subject to section 552.022(a)(1). Further, as section 552.101 of the Government Code applies to confidential information, we will consider your argument under section 552.101 for this information. We will also consider your arguments under sections 552.107(1) and 552.111 of the Government Code for the information not subject to section 552.022.

Texas Rule of Evidence 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made to facilitate the rendition of professional legal services to the client:

(A) between the client or the client's representative and the client's lawyer or the lawyer's representative;

(B) between the client's lawyer and the lawyer's representative;

(C) by the client, the client's representative, the client's lawyer, or the lawyer's representative to a lawyer representing another party in a pending action or that lawyer's representative, if the communications concern a matter of common interest in the pending action;

(D) between the client's representatives or between the client and the client's representative; or

(E) among lawyers and their representatives representing the same client.

Tex. R. Evid. 503(b)(1). A communication is "confidential" if it is not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must (1) show the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show the communication is confidential by explaining it was not intended to be disclosed to third persons and it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein);

In re Valero Energy Corp., 973 S.W.2d 453, 457 (Tex. App.—Houston [14th Dist.] 1998, orig. proceeding) (privilege attaches to complete communication, including factual information).

You state the information you marked and indicated consists of communications between the district's attorneys, including outside counsel employed by the district, and district employees that were made for the purpose of providing legal services to the district. You state the communications were intended to be, and have remained, confidential. Based on your representations and our review of the information at issue, we find the district has established the information you marked and indicated constitutes attorney-client communications under rule 503. Thus, the district may withhold the information you marked and indicated within the information subject to section 552.022(a)(1) of the Government Code pursuant to rule 503 of the Texas Rules of Evidence.⁵

You claim section 552.107 of the Government Code for portions of the information not subject to section 552.022. Section 552.107(1) protects information that comes within the attorney-client privilege. The elements of the privilege under section 552.107 are the same as those discussed for rule 503. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. *See* Open Records Decision No. 676 at 6-7 (2002). Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

As noted above, you inform us some of the remaining information, which you marked, consists of communications between the district's attorneys, including outside counsel employed by the district, and district employees that were made for the purpose of providing legal services to the district. You state the communications were intended to be, and have remained, confidential. Based on your representations and our review, we find you have demonstrated the applicability of the attorney-client privilege to the information you marked. Accordingly, the district may withhold the information you marked within the remaining information under section 552.107 of the Government Code.⁶

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. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, in relevant part, "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355(a). The

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁶As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. Further, in Open Records Decision No. 643, we determined an “administrator” for purposes of section 21.355 means a person who is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

You contend portions of the submitted information consist of confidential evaluations of teachers and administrators by the district. You inform us, and provide documentation showing, the named teachers and administrators at issue were certified as teachers or administrators by the State Board of Educator Certification and were acting as teachers or administrators at the time the evaluations were prepared. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, the remaining information at issue does not evaluate a teacher or administrator for purposes of section 21.355. Thus, we find you have failed to demonstrate the remaining information at issue consists of documents evaluating the performance of a teacher or administrator for purposes of section 21.355 of the Education Code. Accordingly, none of the remaining information at issue may be withheld under section 552.101 of the Government Code on that basis.

Section 552.103 of the Government Code provides, in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office with “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” *See* Open Records Decision No. 452 at 4 (1986). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See id.* Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.⁷ Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

The purpose of section 552.103 is to protect the litigation interests of governmental bodies that are parties to the litigation at issue. *See* Gov't Code § 552.103(a); Open Records Decision No. 638 at 2 (1996) (section 552.103 only protects the litigation interests of the governmental body claiming the exception). In this instance, the representative raises section 552.103 for Exhibit 8 on behalf of the district. In such a situation, we require an affirmative representation from the governmental body with the litigation interest that the governmental body wants the information at issue withheld from disclosure under section 552.103. We note the district only claims section 552.103 for the portions of Exhibit 17 it marked. Therefore, the district may not withhold Exhibit 8 under section 552.103 of the Government Code as asserted by the representative.

You contend the district reasonably anticipated litigation on the date the district received the instant requests for information because the district was involved in settlement negotiations

⁷In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

regarding “resolution of an employment matter, and was made in order to avoid potential and anticipated litigation.” However, you have not provided this office with evidence the individual at issue had taken any objective steps toward filing a lawsuit prior to the date the district received the request for information. *See* Gov’t Code § 552.301(e); Open Records Decision No. 331 (1982). Therefore, based on your representations, our review of the remaining information, and the totality of the circumstances, we find you have not established litigation was reasonably anticipated on the date the district received the request for information. Consequently, the district may not withhold any of the information at issue under section 552.103 of the Government Code.

Section 552.102(a) of the Government Code 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 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). Accordingly, the district must withhold the employee’s date of birth you marked in Exhibit 20 under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). Upon review, we find none of the remaining information consists of a transcript from an institution of higher education for the purposes of section 552.102(b). Consequently, the district may not withhold any of the remaining information under section 552.102(b) of the Government Code.

Section 552.101 of the Government Code also 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. This office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the district has failed to demonstrate any of the remaining information is highly intimate or embarrassing and not of legitimate public interest. Thus, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related

to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the remaining information at issue, we find you have failed to demonstrate any portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code on the basis of constitutional privacy.

You also claim a portion of the remaining information is privileged under Texas Rule of Evidence 408. Rule 408 governs the admissibility of information developed through compromise negotiations. *See* Tex. R. Evid. 408. However, rule 408 does not expressly make information confidential. *See generally* Open Records Decision Nos. 658 at 4 (1998) (stating that statutory confidentiality provision must be express and confidentiality requirement will not be implied from statutory structure), 478 at 2 (1987) (stating that, as general rule, statutory confidentiality requires express language making information confidential), 465 at 4-5 (1987). Accordingly, the district may not withhold any of the remaining information under rule 408 of the Texas Rules of Evidence.

We note portions of the remaining information are subject to sections 552.117, 552.130, and 552.137 of the Government Code.⁸ Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See* Gov't Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, "A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. We note 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). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the

⁸The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee 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. 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, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold the information we have marked under section 552.117(a)(1).

Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130. Accordingly, the district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the city may rely on Open Records Letter Nos. 2016-27954 and 2016-28411 as previous determinations and withhold or release the identical information in accordance with those rulings. The district may withhold the information you marked and indicated within the information subject to section 552.022(a)(1) of the Government Code pursuant to rule 503 of the Texas Rules of Evidence. The district may withhold the information you marked under section 552.107(1) of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the employee's date of birth you marked in Exhibit 20 under section 552.102(a) of the Government Code. 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, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The district must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code. The district must withhold the personal e-mail addresses under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district must release the remaining information; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/som

Ref: ID# 639445

Enc. Submitted documents

c: Requestor
(w/o enclosures)

2 Third Parties
(w/o enclosures)

DR. THOMAS A. WALLIS,
Plaintiff,

v.

KEN PAXTON, ATTORNEY GENERAL
OF THE STATE OF TEXAS, AND
BRYAN INDEPENDENT SCHOOL
DISTRICT
Defendants.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

345th JUDICIAL DISTRICT

Filed in The District Court
of Travis County, Texas

DEC 20 2017 10:40 A.M.
At Velva L. Price, District Clerk

FINAL JUDGMENT

On November 15, 2017, a hearing was held on the Parties' motions for summary judgment. Plaintiff Dr. Thomas A. Wallis and Defendants Ken Paxton, Attorney General of the State of Texas, and Bryan Independent School District (the District), appeared through counsel. This is a lawsuit under the Public Information Act, by which Plaintiff sought declaratory relief from Attorney General Letter Rulings OR2016-24811, OR2016-28427, and OR2017-00064 (the "Letter Rulings"). The Court, having considered the motions, responses, summary judgment evidence, and arguments of counsel, and having reviewed the information at issue submitted for in camera inspection, consisting of In Camera Exhibits A-C, enters the following declaration and orders.

IT IS THEREFORE ORDERED AND DECLARED that Plaintiff's Motion for Summary Judgment is GRANTED IN PART and DENIED IN PART and Defendants' motions for summary judgment are GRANTED IN PART and DENIED IN PART. The Court FINDS AND CONCLUDES the following:

1. The following portions of In Camera Exhibit A are confidential under section 21.355 of the Texas Education Code and must be withheld by the District:
 - a. Part of In Camera Exhibit A-1, consisting of pages:
 - 1-10
 - 165-171
 - 225-227
 - 257-258
 - 301-304; and

b. In Camera Exhibit A-5.

2. The remaining portions of In Camera Exhibit A not designated as confidential in Section 1a and 1b, as well as the entirety of In Camera Exhibits B and C, are not excepted from public disclosure and shall be released by the District to the requestors consistent with the Letter Rulings, once this Judgment is final and no longer subject to appeal, whether by exhaustion of any possible appeal, lapse of time, petition for review, or otherwise, but in no event shall such release occur any later than 30 business days after this Judgment is final and no longer appealable.
3. Once this Judgment is final and no longer subject to appeal, whether by exhaustion of any possible appeal, lapse of time, petition for review, or otherwise, the Third Amended Temporary Injunction Order entered in this cause is hereby converted to a Permanent Injunction with respect to the documents designated as confidential in Sections 1a and 1b above, permanently enjoining the District from releasing the documents designated as confidential in Sections 1a and 1b above.
4. Once this Judgment is final and no longer subject to appeal, whether by exhaustion of any possible appeal, lapse of time, petition for review, or otherwise, the District will treat any and all future requests for information received by the District consistent with this Judgment, and shall not submit such requests to the Attorney General for a determination.
5. The Clerk of the Court is hereby directed to forthwith release Plaintiff Dr. Thomas A. Wallis' bond in the amount of \$100.00 to Dr. Thomas A. Wallis by and through his attorney of record.

All court costs and attorneys' fees are taxed against the parties incurring the same;

All relief not expressly granted is denied; and

This Order disposes of all claims between Plaintiff and Defendants in this cause and is final and appealable.

Signed this 20th day of December, 2017.




JUDGE PRESIDING

TIM SULAK

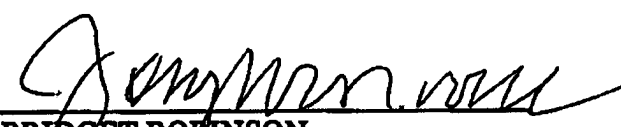
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