



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 12, 2017

Mr. Jaime J. Muñoz
Counsel for the La Joya Independent School District
Law Office of Jaime J. Muñoz
P.O. Box 47
San Juan, Texas 78589

OR2017-12817

Dear Mr. Muñoz:

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# 661418.

The La Joya Independent School District (the "district") received a request for specified campaign finance reports for a specified school board campaign. The district claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the district claims and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or

representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). The district received the request for information on March 7, 2017. The district states it was closed for business between March 13, 2017, through March 17, 2017. The district does not inform us it was closed for any additional business days between March 7, 2017, and April 4, 2017. Accordingly, the district was required to provide the information required by section 552.301(b) by March 28, 2017. Moreover, the district was required to provide the information required by section 552.301(e) by April 4, 2017. However, the envelope in which the district provided the information required by sections 552.301(b) and 552.301(e) was postmarked April 7, 2017. *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). Accordingly, we conclude the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). The district claims section 552.101 of the Government Code for the submitted information. Because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the district's argument under this exception against release of the submitted information.

Next, the requestor argues the district has previously released the information the district now seeks to withhold. The requestor states, and provides documentation showing, the district provided the requested information to a member of the media. Section 552.007 of the Government Code provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code*. § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold previously released information unless its release is expressly prohibited by law or the information is confidential under law. The district now seeks to withhold the requested information under section 552.101 of the Government Code. Section 552.101 protects information made confidential under law. Thus, to the extent any portion of the submitted information has been previously released, we will address the district's argument under section 552.101 against its disclosure.

The submitted information is subject to section 1.012 of the Election Code, which provides as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as otherwise provided by this code or [the Act], all election records are public information.

(d) In this code, "election record" includes:

(1) anything distributed or received by government under this code;

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(1), (d)(3). Campaign contribution and finance reports must be filed under the Election Code. *See id.* §§ 254.031, .061, .091. Thus, the submitted campaign contribution and finance reports constitute "election records" and are public information subject to disclosure, except as provided by the Act. *See id.* § 1.012(a), (c). Accordingly, we will address the district's argument against disclosure.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992), 523 (1989). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORD 600 at 9. Upon review, we find the district has not demonstrated any of the submitted information at issue is highly intimate or embarrassing or the information is of legitimate public concern. Thus, the district may not

withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. Accordingly, the district must release the submitted 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 661418

Enc. Submitted documents

c: Requestor
(w/o enclosures)