



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 11, 2020

Ms. Maya Godbold
Manager, Records and Analytics
Lone Star College
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2020-04057

Dear Ms. Godbold:

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# 810419 (LSC File No. 20-093).

Lone Star College (the "college") received a request for information pertaining to a specified case number. The college indicates it will withhold dates of birth pursuant to the previous determination issued in Open Records Letter No. 2016-20460 (2016).¹ Additionally, the college states it has redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² The college claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and

¹ Open Records Letter No. 2016-20460 is a previous determination issued to the college authorizing it to withhold the dates of birth of identifiable public citizens under section 552.101 of the Government Code in conjunction with common-law privacy without requesting a decision from this office.

² The 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/sites/default/files/files/divisions/open-government/20060725-USDept-Education.pdf>. We note records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of an educational agency or institution other than the law enforcement unit are not records of the law enforcement unit. See 34 C.F.R. § 99.8(b)(2).

552.130 of the Government Code.³ We have considered the exceptions the college claims and reviewed the submitted information.

We must address the college's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that 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(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the claimed 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. *Id.* § 552.301(e). The college received the request for information on November 14, 2019. The college informs us it was closed November 27, 2019, through December 1, 2019, for the Thanksgiving holiday. This office does not count the date the request was received or holidays for purposes of calculating a governmental body's deadlines under the Act. Accordingly, the college was required to provide the information required by section 552.301(e) by December 10, 2019. The college states, and provides documentation showing, it initially mailed the information required by section 552.301(e) on December 10, 2019, but "neglected to address the envelope properly." Section 552.308 of the Government Code provides in pertinent part:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period . . . the requirement is met if the document is sent to the person by first class United States mail *properly addressed* with postage prepaid and:

- (1) it bears a post office cancellation mark indicating a time within that period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period.

Id. § 552.308(a) (emphasis added). Once the error was discovered, the college mailed the information required by section 552.301(e) in a properly addressed envelope postmarked January 9, 2020. *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). As noted above, however, the college was required to mail the information required by section 552.301(e) no later than December 10, 2019. Accordingly, we find the college failed to meet the elements of timeliness established by section 552.308(a). Consequently, we conclude the college failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

³ We understand the college to raise section 552.130 of the Government Code based on its markings.

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 college claims sections 552.101, 552.108, and 552.130 of the Government Code for the submitted information. Because sections 552.101 and 552.130 can provide compelling reasons to overcome the presumption of openness, we will address the college's arguments under these sections for the submitted information. However, we find the college has failed to establish a compelling reason to address its remaining exception.

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. Additionally, 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 some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we note this information pertains to individuals who are de-identified and whose privacy interests are, thus, protected. Therefore, the college may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with common-law privacy.

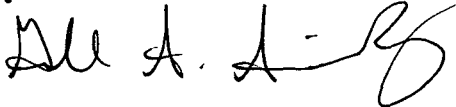
We note the college has marked some motor vehicle record information for redaction pursuant to section 552.130(c) of the Government Code.⁴ We note the remaining information contains additional motor vehicle record information. Section 552.130 of the Government Code provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or a personal identification document issued by an agency of this state or another state or country is excepted from public release. Gov't Code § 552.130(a). Accordingly, the college must withhold the motor vehicle record information it marked and we marked under section 552.130 of the Government Code. The college must release the remaining 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.

⁴ Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Arismendez". The signature is fluid and cursive, with a large, stylized "G" at the end.

Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/mo

Ref: ID# 810419

Enc. Submitted documents

c: Requestor
(w/o enclosures)