



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 24, 2020

Mr. Tony Resendez
Counsel for the West Oso Independent School District
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.
1020 N.E. Loop 410, Suite 450
San Antonio, Texas 78209

OR2020-29407

Dear Mr. Resendez:

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# 855053.

The West Oso Independent School District (the "district"), which you represent, received a request for the addresses and phone numbers of candidates for the district school board election.¹ We understand you have released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you acknowledge some of the submitted information is not responsive to the instant request for information because it does not consist of the candidates' addresses and phone numbers. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

Section 552.1175 of the Government Code provides in part:

¹ You 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).

(b) Information that relates to the home address, home telephone number, emergency contact information, date of birth, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

(2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.²

Gov't Code § 552.1175(b); *see also id.* § 552.1175(a) (types of individuals to whom section 552.1175 applies). Section 552.1175 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Some of the responsive information may relate to individuals subject to section 552.1175 of the Government Code. However, we are unable to determine from the information provided which, if any, of the individuals at issue are subject to this exception. Thus, we must rule conditionally. Accordingly, to the extent the information at issue relates to individuals who are subject to section 552.1175 and who elect to restrict access to their information in accordance with section 552.1175(b), the district must withhold the information we marked under section 552.1175 of the Government Code; however, any cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. Conversely, to the extent the individuals whose information is at issue are not subject to section 552.1175 or do not elect to restrict access to their information in accordance with section 552.1175(b), this information may not be withheld under section 552.1175.

Section 552.101 of the Government Code excepts from public disclosure "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. However, we find you failed to demonstrate any of the remaining responsive information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

² The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, to the extent the information at issue relates to individuals who are subject to section 552.1175 and who elect to restrict access to their information in accordance with section 552.1175(b), the district must withhold the information we marked under section 552.1175 of the Government Code; however, any cellular telephone number may only be withheld under section 552.1175 if a governmental body does not pay for the cellular service. The district must release the remaining responsive 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 <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,

Deborah Southerland
Assistant Attorney General
Open Records Division

DS/be

Ref: ID# 855053

Enc. Submitted documents

c: Requestor
(w/o enclosures)