



December 27, 2000

Mr. Mel Waxler, J.D.  
General Counsel  
Austin Independent School District  
1111 West 6<sup>th</sup> Street  
Austin, Texas 78703-5300

OR2000-4848

Dear Mr. Waxler:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142625.

The Austin Independent School District (the "school district") received a request for information from the computer of a school district employee. Specifically, the requestor seeks: 1) all e-mails from the school district employee sent, received, deleted, or saved, dated from January 1, 2000 to the present; 2) all documents on the employee's computer that do not contain confidential information of the school district's; and 3) all files that have been removed and/or saved since the school district discovered the e-mails that the school district employee was sending from her computer at work. You explain that no information exists that is responsive to request item number 3. In regard to request item numbers 1 and 2, you claim that the responsive information is not subject to the Public Information Act (the "Act"). We have considered your arguments and reviewed the submitted information.

Section 552.021 of the Government Code provides for public access to "public information." Section 552.002 of the Government Code defines public information subject to the Act as "information that is 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 owns the information or has a right of access to it." Gov't Code § 552.002(a). Information is generally "public information" within the Act when it relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties, even though it may be handwritten or in the possession of one person. Open Records Decision No. 635 at 4 (1995). Although not an exhaustive list, the following factors are relevant to determining whether documents are essentially personal in nature: who prepared the document; the nature of its contents; its purpose or use; who possessed it; who had access to it; whether the employer

required its preparation; and whether its existence was necessary to or in furtherance of the employer's business. *Id.* at 5 (citing *In re Grand Jury Proceedings*, 55 F.3d 1012, 1014 (5th Cir. 1995)). We have also held that the ratio of personal to work-related entries is relevant to the nature of the document: "As a general rule, the greater proportion of personal entries, the more likely it is that the trier of fact could reasonably conclude that it was prepared, used, and maintained as a personal document." ORD 635 at 5 n.5 (quoting *In re Grand Jury Proceedings*, 55 F.3d at 1014). Further, if information maintained on a privately owned medium were actually used in connection with the transaction of official business, such as recording the substance of work-related appointments after they have taken place, then the information would be subject to the Act. ORD 635 at 8.

Although the submitted letters and e-mails were composed by a school district employee using a school district computer, we agree the content of these materials is personal in nature and has no connection with the school district's transaction of official business. Therefore, the submitted letters and e-mails are not "public information" under section 552.002, and the school district has no obligations under the Act in regard to this request for information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

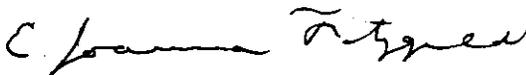
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF\er

Ref: ID# 142625

Encl: Submitted documents

cc: Ms. Debbie Conaway  
242 Piney Ridge Drive  
Bastrop, Texas 78602  
(w/o enclosures)