



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2006

Ms. Christine Badillo
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2006-00346

Dear Ms. Badillo:

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# 239915.

The Taylor Independent School District (the "district"), which you represent, received a request for the following information: 1) a copy of all sent, received, draft, or deleted e-mail, including any archived folders transmitted, received, or maintained by a specified district employee from July 1, 2004, to the present; and 2) a copy of all sent, received, draft, or deleted e-mail, including any archived folders transmitted, received, or maintained by another specified district employee from May 11, 2004, to the present. The requestor subsequently narrowed his request to eliminate e-mail that is protected by attorney-client privilege and e-mail that identifies students of the district.¹ You inform us that you will release a portion of the requested information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.102, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that some of the submitted information is not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. Based on the reasoning in this decision and our review of the information at issue, we determine that the following submitted information does not constitute public information under section 552.002 of the Government Code: user names and passwords, the TEPSA member identification number for website access, the Taylor ISD employee identification number, the update installation password, and the school identification number for access to the Texas Star Chart. Accordingly, this information is not subject to the Act and need not be released to the requestor.

Next, we address your argument that some of the submitted materials are not subject to the Act. You contend that the Act is not applicable to the submitted e-mails contained in Exhibit 4. Section 552.002 of the Act defines "public information" as consisting of

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.

Id. § 552.002(a). You inform us that submitted e-mails in Exhibit 4 consist of a district employee's personal communications. You assert that these e-mails were not collected, assembled, or maintained under any law or ordinance or in connection with the transaction of any official business. You indicate that portions of the submitted information are simply an incidental use of e-mail by a district employee with regard to personal matters. Based on your representations and our review of the communications in question, we agree that these communications at issue do not fall within the definition of public information under section 552.002. *Cf.* Open Records Decision No. 635 at 8 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimus* use of state resources). Therefore, the Act does not require the district to release the personal communications found in Exhibit 4 to the requestor. We now address your arguments against disclosure for the remaining information.

Section 552.102 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information

claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976) for information claimed to be protected under the doctrine of common law privacy as incorporated by section 552.101. We will therefore address common law privacy under section 552.101 together with your claim regarding section 552.102.

The doctrine of common law privacy protects information if it: (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person; and (2) is not of legitimate concern to the public. *Industrial Foundation*, 540 S.W.2d at 685. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We note, however, that the work conduct, job performance, and salary information of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). We have reviewed the submitted information and marked the private information in Exhibit 3 that must be withheld pursuant to sections 552.101 and 552.102.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, personal cellular telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. We note that an individual's work telephone number is not excepted from disclosure on this basis. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You inform us that the employees whose information is at issue have made elections for confidentiality under section 552.024. As such, the district must withhold most of the information you have marked in Exhibit 5 pursuant to section 552.117(a)(1) for district employees who made such elections prior to the date on which the district received this

request for information. We have marked the information in Exhibit 5 that is not subject to section 552.117. We have also marked in Exhibit 3 additional information that is subject to section 552.117 if the employee made the appropriate election.

Section 552.136 of the Government Code provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The district must withhold the access device numbers that you have marked in Exhibit 6 pursuant to section 552.136 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 specifically excluded by section 552.137(c). *See* Gov't Code § 552.137(a)-(c). We note that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business. The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). Unless the relevant individual has consented to its release, we determine that the district must withhold most of the e-mail addresses you have marked in Exhibit 7 and the additional information we have marked in Exhibit 7 under section 552.137. The submitted governmental e-mail addresses and the e-mail addresses of those with whom the district has a contractual relationship are not excepted under section 552.137. We have marked information that was incorrectly bracketed and may not be withheld under section 552.137.

In summary, the submitted user names and passwords, the TEPSA member identification number for website access, the Taylor ISD employee identification number, the update installation password, and the school identification number for access to the Texas Star Chart

are not subject to the Act and need not be released to the requestor. Furthermore, the Act does not require the district to release the personal communications found in Exhibit 4 to the requestor. The district must withhold the information we have marked in Exhibit 3 pursuant to section 552.101 in conjunction with common law privacy. The district must also withhold most of the employee's personal information you have marked in Exhibit 5 and the information we have marked in Exhibit 3 under section 552.117. The district must also withhold the access device numbers that you have marked in Exhibit 6 pursuant to section 552.136 and the most of the e-mail addresses you have marked in Exhibit 7 and the additional information we have marked in Exhibit 7 under section 552.137. The remaining information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Dep't of Pub. 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 Office of the Attorney General 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/er

Ref: ID# 239915

Enc. Submitted documents

c: Mr. T. Christopher Robson
7200 N. Mopac Expressway, Suite 320
Austin, Texas 78731
(w/o enclosures)