



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2006

Ms. Donna L. Clarke
Assistant Criminal District Attorney
Civil Division
P.O. Box 10536
Lubbock, Texas 79408-3536

OR2006-01555

Dear Ms. Clarke:

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# 242401.

The Lubbock County District Attorney's Office (the "district attorney") received a request for all e-mail communications of the Interim District Attorney for a thirty-day time period. The requestor subsequently modified his request to specifically exclude communications related to open cases and investigations, and to allow the redaction of e-mail addresses that are expressly confidential by law. You indicate that you have provided the requestor with a portion of the requested information. You argue that the remaining requested information is not subject to the Act. In the alternative, you claim that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note that the submitted documents contain information that is specifically excluded by the precise language of the request. The requestor has requested that the information be redacted of any e-mail address that is expressly confidential by law. Accordingly, any e-mail addresses within the requested documents that would be excepted from disclosure pursuant to section 552.137 of the Government Code are not responsive to the present request. This ruling does not address the district attorney's arguments regarding the public availability of any information that is not responsive to the present request, and the district attorney need not release that information in response to this request.

Next, we address your contention that the submitted information is not public information subject to disclosure under the Act. The Act only applies to public information. *See* Gov't Code § 552.021. Section 552.002 of the Government Code defines public information 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. Although in Open Records Decision No. 77 (1975) this office determined that personal notes made by individual faculty members for their own use as memory aids were not subject to the Act, in Open Records Decision No. 327 (1982) this office found that notes made by a school principal and athletic director relating to a teacher "were made in their capacities as supervisors of the employee" and thus constituted public information. Open Records Decision No. 327 at 2 (construing predecessor statute); *see also id.* Nos. 635 (1995) (public official's or employee's appointment calendar, including personal entries, may be subject to Act), 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are public information), 120 (1976) (faculty members' written evaluations of doctoral student's qualifying exam subject to predecessor of Act).

You state that "Lubbock County policy, which has been adopted by the [district attorney] allows for employees to send and receive personal e-mails and use of the internet 'for incidental personal matters.'" You argue that the submitted information consists of e-mails sent by the Interim District Attorney that were not connected with the transaction of government business. Based on your representations and our review of the submitted e-mails, we agree that some of these communications, which we have marked, do not relate to the transaction of official district attorney business, and therefore do not constitute public information of the district attorney. Consequently, the district attorney is not required to disclose these marked e-mails under the Act. *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). However, we find the communications that concern the Interim District Attorney's campaign for re-election do constitute public information, as defined by section 552.002. Thus, we will address the exceptions you raise for this information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information made confidential by statute. We understand you to argue that a portion of the information in Exhibit A is confidential under section 58.007 of the Family Code. Section 58.007 makes certain juvenile law enforcement records confidential. Section 58.007(c) provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Although we understand you to raise section 58.007 of the Family Code for portions of Exhibit A, you have failed to explain, and the information does not reflect, how it constitutes a law enforcement record or file concerning a juvenile suspect or offender. Therefore, no portion of Exhibit A may be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); 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). Upon review, we find that no portion of Exhibit A constitutes highly intimate or embarrassing information for the purposes of common-law privacy. Therefore, the district attorney may not withhold any portion of Exhibit A under section 552.101 in conjunction with common-law privacy.

In summary, we have marked information which is not subject to the Act. The district attorney must release the remaining responsive information 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).

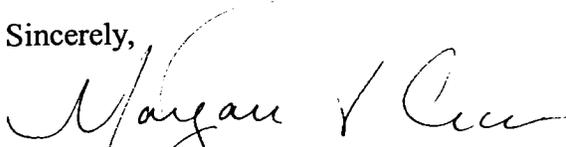
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script, appearing to read "Margaret Cecere".

Margaret Cecere
Assistant Attorney General
Open Records Division

MC/segh

Ref: ID# 242401

Enc. Submitted documents

c: Mr. John Reynolds
The Avalanche-Journal
P.O. Box 491
Lubbock, Texas 79408
(w/o enclosures)