



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2006

Ms. Jennifer S. Riggs
Riggs & Aleshire
700 Lavaca, Suite 920
Austin, Texas 78701

OR2006-05352

Dear Ms. Riggs:

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# 248469.

The Arlington Independent School District (the "district"), which you represent, received a request for "all documents . . . relating to Representative Kent Gruserdorf, Diane Patrick (candidate for HD 94), and/or the campaign for House District 94 produced, distributed and maintained by any employee of the [district]," including but not limited to e-mail messages, text messages, blogs, memoranda, and other materials.¹ Although the requestor seeks information relating to specific persons and the House District 94 race, the district has released information that does not directly relate to the requested items. The information the district released are district policies concerning 1) the prohibition of the distribution of campaign materials on campus, 2) employees' wearing of campaign buttons off-campus, and 3) employees' right to vote. The district asks two questions. The first is "whether the Public Information Act requires that the [district] search its electronic files to determine if there are responsive communications." The second is whether district employees have any expectation of privacy in information maintained in their computers provided by the district. The district claims any personal e-mails are not subject to the Act because they are not "public information" as defined by section 552.002 of the Government Code. In the alternative, the district asserts the requested information is excepted from disclosure under

¹We understand that the district is seeking clarification of a portion of the request. Accordingly, should the requestor respond to the request for clarification, the district must seek a ruling from this office before withholding any responsive information from her. *See generally* Open Records Decision No. 633 (1999) (providing for tolling of ten-business-day deadline to request attorney general decision while governmental body awaits clarification).

sections 552.101 and 552.102 of the Government Code. We have considered the district's arguments.

The district explains it permits employees limited personal use of its computers and electronic communication system. Its policy states the e-mails shall not be considered private and they are subject to monitoring to ensure appropriate use. Based on this policy, the district asks whether district employees have an expectation of privacy in their work computers that would prevent the district from searching their computers for responsive information. This question raises an issue outside of the Act's scope, and therefore, is not within this office's authority to opine. Rather, the district's counsel is the appropriate party to make this determination. Thus, this office will not issue a determination as to this query.

However, this office is authorized to issue decisions interpreting the Act. Gov't Code § 552.011 (to maintain uniformity in application, operation, and interpretation of chapter 552, attorney general may publish any materials, including written decisions and opinions, that relate to or are based on chapter 552). Furthermore, section 552.301 requires a governmental body to seek an attorney general's decision when it receives a written request for information and wishes to withhold the information from public disclosure. *Id.* § 552.301(a). Before this office determines whether a governmental body's asserted exception applies to the information, we must first determine whether the information is public information as defined by section 552.002. *Id.* § 552.002(a) (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").

With this background of the Act, we now consider the district's question "whether the Public Information Act requires that the [district] search its electronic files to determine if there are responsive communications." Thus, the district has made no attempt to locate the requested information. It is a basic principle that, when a governmental body receives a written request for information pursuant to the Act, it must conduct a search for any responsive information. This office has held that a governmental body must make a good faith effort to relate a request to information that it holds. Open Records Decision Nos. 561 at 8 (1990), 87 at 5 (1975) ("Act imposes an obligation on the City to make a good faith effort to relate the request to information held by it" and promptly produce the information or forward the information to this office for a determination), 31 at 4 (1974) ("it is incumbent upon the agency to make a good faith effort to attempt to identify such records as might fit the request"). Thus, the answer to the district's question is an emphatic yes; pursuant to the Act, the district is required to search its electronic files for any responsive information. Presently, the district is merely speculating that the responsive records are personal e-mails that are not subject to the Act. Because the district has made no search and therefore has not submitted

the information for our review, we have no basis for finding that it is not subject to the Act.² The district may even have responsive information that is public information subject to the Act, but it cannot affirmatively make that determination without a search of its files.

Pursuant to section 552.301(e)(1)(D), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. By failing to submit the requested information, the district has not complied with section 552.301(e)(1)(D). A governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Sections 552.101 and 552.102 can provide compelling reasons to overcome the presumption of openness. However, without the information to review, we have no grounds for finding it confidential. Therefore, the district may not withhold any responsive information under section 552.101 or section 552.102 and must release this information to the requestor. If you believe such information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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

²The district cites to Open Records Letter No. 2005-01126 (2005). In that ruling, the City of Cedar Park conducted a search for the responsive information and identified the information that is and is not subject to the Act. Here, the district has not even conducted a search and determined if it has any responsive information.

general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

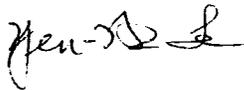
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Tex. 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 248469

c: Ms. Janelle Shepard
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