



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 19, 2007

Ms. Heather R. Rutland  
Henslee, Fowler, Hepworth & Schwartz  
For the Wimberley Independent School District  
816 Congress Ave., Suite 800  
Austin, Texas 78701

OR2007-02985

Dear Ms. Rutland:

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# 273732.

The Wimberley Independent School District (the "district"), which you represent, received a request for "all email communications between Board members and Marian [Strauss] and directly between Board members . . . from November 7, 2006 to the present."<sup>1</sup> You state that you will release some of the requested information. You claim that Exhibit E is not public information under the Act. You also claim that the submitted information is excepted from disclosure under sections 552.107, 552.114, and 552.117 of the Government Code. We have considered your arguments and reviewed the submitted information.<sup>2</sup>

Recently, the United States Department of Education Family Policy Compliance Office informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20

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<sup>1</sup>We note that this statement is based on the district's representations, as the district has not submitted the request letter.

<sup>2</sup>We 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.

U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>3</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted, among other things, unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine the appropriate redactions under FERPA, we will not address the applicability of FERPA to any of the submitted records.<sup>4</sup> Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>5</sup>

Next, we address your assertion that Exhibit E is not public information. 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.” *See* Gov’t Code § 552.002(a). In this instance, you claim that Exhibit E consists of personal e-mails created by individual district board members in their private capacity on a private citizens group. Further, you claim that the e-mails do not relate to official district policy since the group’s purpose is to help determine the community’s wishes. Upon review, however, we find that the e-mails at issue are communications between board members that relate to district business. Specifically, the e-mails contain detailed references to the policies and procedures of the board and the district; discussions regarding a building project and bond issue; and other relevant board and district information. Thus, we find that the e-mails in Exhibit E relate to the transaction of the official business of the district. Accordingly, Exhibit E constitutes public information subject to the Act and we will address your claimed exceptions to disclosure.

Next, we must address the district’s obligations under the Act. Pursuant to section 552.301(e), a governmental body receiving an open records request for information that it wishes to withhold pursuant to one of the exceptions to public disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the

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<sup>3</sup>A copy of this letter may be found on the Office of the Attorney General’s website at [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

<sup>4</sup>Due to this limitation, we will not address your section 552.114 argument.

<sup>5</sup>In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov't Code* § 552.301(e). As of the date of this letter, you have not submitted a copy of the written request for information. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the 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 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). Section 552.107 of the Government Code is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, none of the submitted information may withheld under section 552.107 of the Government Code. Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.117 can provide a compelling reason to withhold information, we will address your argument concerning this exception.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and 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. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is received. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received. In this case, you only inform us and provide documentation showing that some of the district's board members whose records are at issue timely elected confidentiality under section 552.024. As to the remaining board member, you do not inform us nor provide documentation showing that this person timely elected confidentiality under section 552.024. Thus, for board members who timely elected to keep their personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. The district may not withhold this information under section 552.117(a)(1) for board members who did not make a timely election to keep the information confidential.

We note that the remaining information contains e-mail addresses. 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 of a type specifically excluded by subsection (c).<sup>6</sup> See Gov’t Code § 552.137(a)-(c). The e-mail addresses contained in the submitted information are not the type specifically excluded by section 552.137(c). Therefore, unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the district must withhold them in accordance with section 552.137 of the Government Code.

In summary, for board members who timely elected to keep their personal information confidential, you must withhold this information, which we have marked, under section 552.117(a)(1) of the Government Code. The district may not withhold this information for board members who did not make a timely election. Unless the individuals whose e-mail addresses are at issue consented to release of their e-mail addresses, the district must withhold them in accordance with section 552.137 of the Government Code. As you do not raise any other exceptions against disclosure, the remaining information must be released.

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

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<sup>6</sup>The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

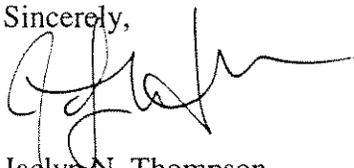
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor 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,



Jaclyn N. Thompson  
Assistant Attorney General  
Open Records Division

JNT/krl

Ref: ID# 273732

Enc. Submitted documents

c: Mr. Basil Lombardo  
c/o Ms. Heather R. Rutland  
Henslee, Fowler, Hepworth & Schwartz  
For the Wimberley Independent School District  
816 Congress Ave., Suite 800  
Austin, Texas 78701  
(w/o enclosures)