



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2007

Ms. Laura M. Jamouneau
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2007-10101

Dear Ms. Jamouneau:

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# 285904.

The Terrell Independent School District (the "district"), which you represent, received a request for several categories of information regarding a specified former teacher. You state that a portion of the requested information has been released to the requestor. We understand that the district is withholding information protected by the Family Educational Rights and Privacy Act of 1974. You claim that some of the submitted information is excepted from disclosure under sections 552.102, 552.107, 552.117, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 552.102(b) of the Government Code excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102; Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, the courses taken, and the degree obtained, the district must withhold the transcript information in Tab 4 under section 552.102(b) of the Government Code.

Section 552.107(1) of the Government Code protects information within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden

¹We note that the district has redacted a social security number in the submitted information. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.* 503(b)(1), meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

In this case, you represent that the information in Tab 2 consists of confidential communications, made for the purpose of facilitating the rendition of professional legal services, between a school district attorney and district representatives. You assert that the communications were intended to be and have remained confidential. Thus, we conclude that the district may withhold the information in Tab 2 under section 552.107(1) of the Government Code.

Next, we address your claim that portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former home addresses, telephone 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. Gov’t Code § 552.117(a)(1). *See also* Open Records Decision No. 670 (2001) (extending section 552.117(a)(1) exception to personal cellular phone number and personal pager number of employee who elects to withhold home phone number in accordance with section 552.024). Whether 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)*. Pursuant to section 552.117(a)(1), the district must withhold the personal information that pertains to a current or former employee of the district who elected, prior to the district's receipt of the request for information, to keep such information confidential. You state that the employee in question did timely choose not to allow public access to her home telephone number. Accordingly, we agree that the district must withhold the home and cellular telephone numbers you have marked pursuant to section 552.117.

Section 552.136(b) of the Government Code states that "[n]otwithstanding 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. You have not demonstrated, however, and it does not otherwise appear to this office that the account numbers you have marked in Tab 5 are access device numbers subject to section 552.136 of the Government Code. Therefore, we conclude that none of the account numbers that you have marked in Tab 5 may be withheld under section 552.136.

Finally, 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). *See Gov't Code § 552.137(a)-(c)*. The e-mail addresses you have marked in Tabs 3 and 6 are not of the type specifically excluded by section 552.137(c). Accordingly, unless the individuals whose e-mail addresses are at issue consented to their release, the district must withhold the marked e-mail addresses under section 552.137 of the Government Code.

In summary, the district must withhold the transcript information in Tab 4 under section 552.102(b) of the Government Code, with the exception of the employee's name, the courses taken, and the degree obtained. The district may withhold the information in Tab 2 under section 552.107(1) of the Government Code. *The district must withhold the telephone numbers you have marked in Tab 6 pursuant to section 552.117(a)(1) of the Government Code.* Finally, the district must withhold the e-mail addresses you have marked in Tabs 3 and 6 under section 552.137 of the Government Code, unless the individuals whose e-mail addresses are at issue consented to their release. The remaining submitted 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).

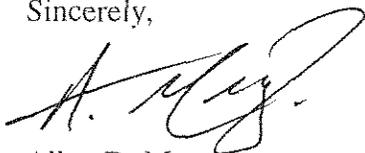
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the 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,



Allan D. Meesey
Assistant Attorney General
Open Records Division

ADM/eeg

Ref: ID# 285904

Enc. Submitted documents

c: Mr. Jordan Smith
7217 North State Highway 34
Terrell, Texas 75161
(w/o enclosures)