



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 14, 2009

Mr. Roger D. Hepworth
Henslee Schwartz L.L.P.
816 Congress Avenue, Suite 800
Austin, Texas 78701-2443

OR2009-06558

Dear Mr. Hepworth:

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# 343258.

The Hutto Independent School District (the "district"), which you represent, received a request for electronic correspondence between two named individuals during a specified time interval. You inform us that the district requested and received clarification of the request.¹ You state that the district has released some of the requested information.² You contend that some of the remaining requested information is not subject to the Act. You also claim that some of the remaining information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered your arguments and reviewed the information you submitted.

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

²You inform us that information relating to students was redacted from the information that was released pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. We note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

We first note that much of the information submitted as Exhibit B does not fall within the time interval specified by the requestor. Thus, that information, which we have marked, is not responsive to this request. This decision does not address the public availability of the information that is not responsive to this request, and the district need not release that information in response to this request.

Next, we address your arguments against disclosure of the responsive information. You contend that the responsive information in Exhibit B is not "public information," as defined by section 552.002 of the Government Code, and as such is not subject to disclosure under the Act. Section 552.002(a) provides that "public information" consists 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.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987). You contend that the responsive e-mails in Exhibit B are "personal in nature and ha[ve] no connection with the school district's transaction of official business." You also state that the district did not require the preparation of these e-mails and that they were "not necessary to [the] furtherance of the school district's business." Based on your representations and our review of the e-mails in question, we agree that they do not constitute public information for the purposes of section 552.002. We therefore conclude that the responsive information in Exhibit B is not subject to disclosure under the Act and need not be released to the requestor.³ *See* Open Records Decision No. 635 at 4 (1995) (Gov't Code § 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources).

³As we are able to make this determination, we need not address your claim for this information under section 552.137 of the Government Code.

Next, we address your claims under sections 552.101 and 552.137 of the Government Code for the highlighted information in Exhibit C.⁴ Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. You raise section 552.101 in conjunction with common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). You have highlighted and seek to withhold the address and telephone number of an individual who appears to be a member of the public.⁵ This office has concluded that an individual’s home address and telephone number are generally not protected by common-law privacy under section 552.101. *See Open Records Decision No. 554 at 3 (1990)* (disclosure of a person’s home address and telephone number is not an invasion of privacy). You have not provided any basis for a conclusion that the particular address and telephone number at issue here are intimate or embarrassing and not a matter of legitimate public interest. We therefore conclude that the district may not withhold the address and telephone number in question under section 552.101 of the Government Code in conjunction with common-law privacy. As you claim no other exception to the disclosure of that information, it must be released.

Section 552.137 of the Government Code states that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We agree that the highlighted e-mail addresses in Exhibit C fall within the scope of section 552.137. We have marked other e-mail addresses in Exhibit C that also are subject to this exception. The district must withhold the highlighted e-mail addresses, as well as the e-mail addresses that we have marked, under section 552.137, unless the owner of a particular e-mail address has affirmatively consented to its public disclosure.

In summary: (1) the responsive information in Exhibit B is not subject to disclosure under the Act as public information and need not be released to the requestor; and (2) the district must withhold the highlighted e-mail addresses in Exhibit C, as well as the additional e-mail

⁴You inform us that the remaining information in Exhibit C has been released.

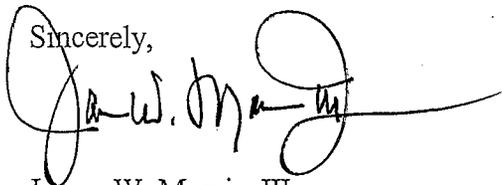
⁵You do not indicate that this individual is a current or former employee of the district whose personal information might be protected by section 552.117 of the Government Code. *See Gov’t Code §§ 552.024, .117(a)(1).*

addresses that we have marked, under section 552.137 of the Government Code, unless the owner of an e-mail address has consented to its disclosure.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cc

Ref: ID# 343258

Enc: Submitted documents

c: Requestor
(w/o enclosures)