



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 3, 2010

Ms. Judy Brown
Walsh, Anderson, Brown, Gallegos and Green, P.C.
P.O. Box 2156
Austin, Texas 78768

ATTORNEY GENERAL OF TEXAS

OR2010-11643

Dear Ms. Brown:

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# 389108.

The Italy Independent School District (the "district"), which you represent, received a request for all e-mails sent between two named individuals from August 1, 2009 to April 1, 2010.¹ You claim that the submitted information is not subject to the Act. We have considered your argument and reviewed the submitted representative sample of information.²

Initially, we note that you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See Gov't Code*

¹You state the district sought and received clarification of the information requested. *See Gov't Code* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²We assume that the "representative sample" of information 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.

§§ 552.301(a), .301(e)(1)(D). The district has redacted e-mail addresses subject to section 552.137 of the Government Code, which the district is authorized to redact pursuant to Open Records Decision No. 684 (2009).³ The district has also redacted names. We understand that some of these names are student names, which the district is authorized to redact pursuant to the federal Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.⁴ However, you do not assert, nor does our review of our records indicate, that the district is authorized to redact the names of other individuals without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this type of information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting without authorization any information from the information that it submits to this office in seeking an open records ruling.

You claim the submitted e-mails are not subject to the Act. The Act is only applicable to “public information.” *See Gov’t Code* § 552.021. Section 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.” *Id.* § 552.002(a). You state that the submitted information consists of personal e-mails that do not relate to the transaction of official district business. Although the submitted e-mails were sent using district e-mail accounts, you state the e-mails were not created or sent “in the performance of [the employees’] official job duties.” Upon review, we agree that the some of the submitted e-mails do not constitute “information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business” by or for the district. *See id.* § 552.021; *see also* 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). Thus, we conclude that a portion of the submitted information is not subject to the Act, and need not be released in response to this

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

⁴The 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>.

request. However, upon review, we find that some of the submitted e-mails were collected or assembled or are maintained in connection with the transaction of official district business; thus, these e-mails constitute "public information" as defined by section 552.002(a). Accordingly, these e-mails, which we have marked, are subject to the Act and must be released unless they fall within the scope of an exception to disclosure.

We note a portion of the information subject to the Act may be subject to section 552.117(a)(1) of the Government Code.⁵ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Therefore, to the extent the employee concerned timely requested confidentiality under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). However, if the employee at issue did not timely elect confidentiality under section 552.024, the district may not withhold the marked information under section 52.117(a)(1) of the Government Code.

In summary, except for the e-mails we have marked, the submitted information is not subject to the Act and need not be released. The district must withhold the information we have marked under section 552.117 of the Government Code, to the extent the employee concerned timely requested confidentiality under section 552.024. The remaining information, which we have marked, must be released.

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

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 389108

Enc. Submitted documents

c: Requestor
(w/o enclosures)