



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 31, 2011

Dr. Richard Rivera  
Superintendent of Schools  
Weslaco Independent School District  
P.O. Box 266  
Waco, Texas 78599-0266

OR2011-07643

Dear Dr. Rivera:

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# 419056.

The Weslaco Independent School District (the "district") received a request for all e-mails between two district e-mail addresses during a specified time period.<sup>1</sup> We understand you to claim the submitted information is not subject to the Act. Alternatively, you claim that a portion of the submitted information is excepted from disclosure under section 552.151 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we note a portion of the submitted information is neither an e-mail nor an attachment to an e-mail. Therefore, this information is not responsive to the present request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release such information.

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<sup>1</sup>You state the district sought and received clarification from the requestor. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

Next, you state that the requested information is not readily available, and that you must access your archives in order to obtain it. You argue that, if the request requires the district to perform research to obtain or create information, such information is not subject to the Act. The Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Additionally, we note the Act does not require a governmental body to release information that did not exist when it received a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1, 452 at 3 (1986), 362 at 2 (1983). However, we also note a governmental body may not decline to comply with the requirements of the Act on the ground of administrative inconvenience. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976) (cost or difficulty in complying with Act does not determine availability of information). Upon review of the request for information, we do not interpret the request to require the district to perform any research or create new information. Because you have submitted responsive information for our review, we will consider your arguments for this information.

You argue the information at issue is not subject to the Act because it consists of personal e-mails. The Act is applicable only to “public information.” *See* Gov’t Code §§ 552.002, .021. Section 552.002(a) defines “public information” as:

[I]nformation 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). 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). You state the e-mails at issue are personal e-mails of district employees, and indicate they were not collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official district business. Based on your representations and our review of the submitted information, we agree that some of the submitted e-mails do not constitute public information for the purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 4 (1995) (section 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). As such, the e-mails we have marked are not subject to the

Act, and the district need not release them in response to this request.<sup>2</sup> However, we find the remaining responsive e-mails were collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official district business and are, therefore, public information subject to the Act.

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>3</sup> Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked are not any of the types specifically excluded by section 552.137(c). Accordingly, the district must generally withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses have affirmatively consented to their release under section 552.137(b). However, we note some of the e-mail addresses we have marked are associated with public universities. If these individuals are employees of the universities, then their e-mail addresses are not excepted under section 552.137 and must be released. If these individuals are students of the universities, then their e-mail addresses are excepted from disclosure under section 552.137 and must be withheld, unless the individuals at issue consent to their disclosure.<sup>4</sup>

In summary, the district need not release the information we have marked that is not subject to the Act. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners have consented to their release; however, if the marked public university e-mail addresses belong to employees of the universities, then the e-mail addresses are not excepted under section 552.137 and must be released. The district must release the remaining responsive information that is subject to the Act.

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.

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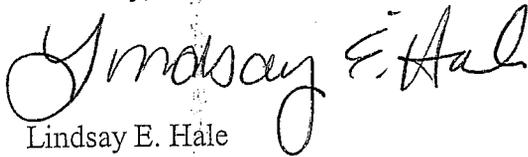
<sup>2</sup>As we are able to make this determination, we need not address your remaining argument against disclosure of this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

<sup>4</sup>We note this office issued Open Records Decision No. 684 (2009), 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.

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](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, toll free at (888) 672-6787.

Sincerely,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

LEH/em

Ref: ID# 419056

Enc. Submitted documents

c: Requestor  
(w/o enclosures)