



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2004

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2004-3625

Dear Mr. Junell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200849.

The Teacher Retirement System of Texas ("TRS") received a request for the requestor's e-mail account from his employee profile, including inbox, sent items, and personal address book. You state that TRS has released some of the requested information to the requestor. However, you claim that a portion of the requested information is not subject to the Public Information Act (the "Act"). In the alternative, you claim that portions of this information are excepted from disclosure under sections 552.136, 552.137, and 552.139 of the Government Code. We have considered your arguments and reviewed the submitted information.

First, you characterize the e-mail communications in Exhibit B as being purely personal in nature. Chapter 552 of the Government Code 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." Information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

You assert that the submitted personal e-mails in Exhibit B were not collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by or for TRS. Based on your arguments and our review of the e-mails at issue, we agree that these communications do not appear to relate to the transaction of official TRS business and therefore do not constitute "public information" of TRS. Consequently, TRS is not required to disclose the submitted e-mail communications in Exhibit B under chapter 552 of the Government Code. *Cf.* 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).

Next, we address your arguments that portions of Exhibits A-1 and A-2 are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer-related information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information that is made public under section 552.021 of the Act. *Id.* at 6. You state that Exhibits A-1 and A-2 "contain account user names, passwords, and vendor contact information relating to the computer network or systems of [TRS]," and that the information at issue "constitutes tools or means for accessing and maintaining TRS's computer network or systems." Based on your representations and our review of the information at issue, we conclude that the information in Exhibits A-1 and A-2 we have marked does not constitute public information for the purposes of section 552.002 of the Act. Therefore, this information is not subject to disclosure under section 552.021 of the Act, and it need not be released.¹

In regard to the remaining highlighted information in Exhibits A-1 and A-2, section 552.137 of the Government Code provides:

(a) Except as otherwise provided by this section, 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 this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

....

¹As our ruling on this issue is dispositive, we need not address your arguments under section 552.139 of the Government Code.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the members of the public with whom the e-mail addresses are associated have affirmatively consented to their release. Section 552.137 does not apply to a government employee's work e-mail address or a business's general e-mail address or web address. Accordingly, we conclude that, unless consent to release has been granted, TRS must withhold the e-mail addresses we have marked pursuant to section 552.137(a) of the Government Code. The remaining e-mail addresses are not subject to section 552.137 and must be released.

Finally, you assert that the remaining information you have marked in Exhibits A-1 and A-2 is excepted from disclosure under section 552.139 of the Government Code. This section provides in pertinent part:

(a) Information is excepted from the requirements of Section 552.021 if it is information that relates to computer network security or to the design, operation, or defense of a computer network.

(b) The following information is confidential:

(1) a computer network vulnerability report; and

(2) any other assessment of the extent to which data processing operations, a computer program, network, system, or software of a governmental body or of a contractor of a governmental body is vulnerable to unauthorized access or harm, including an assessment of the extent to which the governmental body's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Upon review, we determine that you have not demonstrated that the remaining information you have marked relates to computer network security or to the design, operation, or defense of a computer network as contemplated in section 552.139(a). Furthermore, you have not demonstrated that the information consists of a computer network vulnerability assessment or report as contemplated in section 552.139(b). Consequently, the remaining information in Exhibits A-1 and A-2 is not excepted under section 552.139 and must be released to the requestor.

In summary, we conclude that: 1) the information in Exhibit B and the computer information we have marked in Exhibits A-1 and A-2 do not constitute public information

under the Act and are not subject to disclosure; and 2) unless consent to release has been granted, TRS must withhold the e-mail addresses we have marked in Exhibits A-1 and A-2 pursuant to section 552.137(a) of the Government Code. All 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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 Texas Building and Procurement Commission 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/krl

Ref: ID# 200849

Enc: Submitted documents

c: Mr. Michael Nichols
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Austin, Texas 78728-4342
(w/o enclosures)