



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 19, 2007

Ms. Laura C. Rodriguez  
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.  
For Ingleside Independent School District  
P.O. Box 460606  
San Antonio, Texas 78246

OR2007-12157

Dear Ms. Rodriguez:

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# 289635.

The Ingleside Independent School District (the "district"), which you represent, received two requests for e-mails between two named individuals during specified time periods. You indicate that some of the responsive information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a). You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you inform this office that the district previously released the submitted information to the requestors. The Act does not permit the selective disclosure of information to the public. *See* Gov't Code §§ 552.007(b), .021; Open Records Decision No. 463 at 1-2 (1987). If a governmental body voluntarily releases information to a member of the public, such information may not later be withheld unless its disclosure is expressly prohibited by law. *See* Gov't Code § 552.007. Because section 552.101 of the Government Code protects information that is confidential by law, we will address your arguments with regard to that exception for all of the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate and embarrassing facts

the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683. Upon review, we find that none of the submitted information is protected by common-law privacy. Therefore, the district may not withhold any portion of the submitted information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

We note that some of the submitted information may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security 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). 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). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Therefore, the district may only withhold the information we have marked under section 552.117(a)(1) if the employee at issue timely elected to keep her personal information confidential.

We also note that a portion of the remaining submitted information is subject to section 552.137 of the Government Code. Section 552.137 states in part that “[e]xcept 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 [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a). 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 have marked the e-mail addresses that the district must withhold under section 552.137, unless the owner of the e-mail address has affirmatively consented to its disclosure.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, the district must withhold the information we have marked under section 552.117 of the Government Code, if the employee timely elected to keep her personal information confidential. The district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owner of the e-mail address has affirmatively consented to its disclosure. 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).

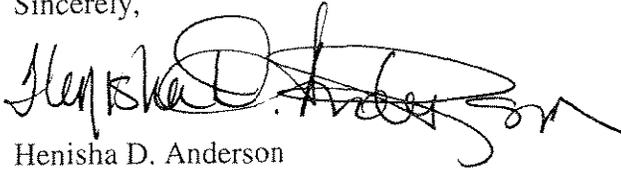
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink, appearing to read "Henisha D. Anderson". The signature is stylized and somewhat cursive, with a large loop at the beginning and a long, sweeping tail.

Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/jb

Ref: ID# 289635

Enc. Submitted documents

c: Ms. Corinna Howerton  
2201 Coronado Drive  
Ingleside, Texas 78362  
(w/o enclosures)