ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2007

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

OR2007-13195A

Dear Ms. Rodriguez:

This office issued Open Records Letter No. 2007-13195 (2007) on October 10, 2007. We have examined this ruling and determined that we made an error in characterizing the request, and subsequently determining that no part of the submitted information was responsive to the request. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on October 10, 2007. *See generally* Gov't Code 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 291750.

The Judson Independent School District (the "district"), which you represent, received a request for e-mails with the subject line "Derek's Scholarship," sent from a specified e-mail address, during the period June 1 to July 16, 2007, to any e-mail address with the district's domain name, any vendor or employee of a vendor who is included on the list submitted by the requestor, as well as any e-mail meeting the above criteria received through the district's website. The district states that it does not possess, control, or have access to e-mails sent

from a private e-mail address.[1] The district states that the submitted information is not subject to the Act. In the alternative, you assert that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.[2] We have also considered comments submitted by the requestor and her representative. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

You assert that the submitted e-mail is not public information. Section 552.002 of the Government Code 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." *See id.* § 552.002(a). In this instance, you explain that the submitted e-mail was sent from a district board member's personal e-mail address to a district employee at a district e-mail address. You state that the substance of the e-mail does not relate to official district business. Upon review, we find that the submitted e-mail is not "public information" under the Act because it does not relate to the transaction of official district business. *See id.* § 552.002; *see also* Open Records Decision No. 635 at 4 (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). Rather, we agree that this information is a personal note. Accordingly, the district is not required to disclose the submitted e-mail under the Act.[3]

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

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[1]The district explains that it has located only one e-mail that is responsive to the current request. A governmental body must make a good-faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561(1990) (construing statutory predecessor). We assume that you have done so.

[2]We assume that the "representative sample" of records 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.

[3]As our ruling for this information is dispositive, we do not address your argument under section 552.101 of the Government Code.

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,

Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/jh

Ref: ID# 291750

Enc. Submitted documents

c: Ms. Jena Heath
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