



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2008

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

OR2008-07404

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# 311314.

The Northside Independent School District (the "district"), which you represent, received a request for all of the superintendent's incoming and outgoing e-mails on February 23, 2008. You claim that some of the requested information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the

open records ruling process under the Act.¹ *See* 20 U.S.C. § 1232g(d). Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted, among other things, unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA should be made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.² We will, however, address the applicability of the claimed exceptions to the submitted information.

Section 552.117(a)(1) excepts from disclosure the current and former home addresses, 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 of the Government Code. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected under 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). You state that the employee at issue elected to keep her home address and telephone number confidential prior to the time that the district received the instant request for information. Thus, the district must withhold the information you have marked, and the additional information we have marked, under section 552.117 of the Government Code.

Section 552.137 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). *See* Gov’t Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee’s work email address because such an address is not that of the employee as a “member of the public,” but is instead the address of the individual as a government employee. We note that one of the e-mail addresses you have marked is a governmental e-mail address that is not excepted under section 552.137. We have marked this e-mail address for release. The remaining e-mail address is not a type specifically excluded by section 552.137(c). You do not inform us that the owner of the e-mail address has affirmatively consented to its release. Therefore, the district must

¹A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²In the future, if the district does obtain parental or an adult student’s consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

withhold the remaining information you have marked under section 552.137 of the Government Code.

In summary, the district must withhold the information you have marked, and the information we have marked, pursuant to section 552.117(a)(1) of the Government Code. With the exception of the information we have marked for release, the district must withhold the information you have marked pursuant to section 552.137 of the Government Code. The remaining information must be released to the requestor.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/jb

Ref: ID# 311314

Enc: Submitted documents

c: Mr. Raymond Tamayo
10734 Vollmer Lane
San Antonio, Texas 78254-1757
(w/o enclosures)