



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 5, 2008

Ms. Amanda M. Bigbee
Ms. Emily Hollenbeck
Henslee Schwartz, L.L.P.
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2008-12240

Dear Ms. Bigbee and Ms. Hollenbeck:

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# 319482.

The Carroll Independent School District (the "district"), which you represent, received a request for eighteen categories of information pertaining to the requestor's client and a district elementary school. The district has redacted social security numbers pursuant to section 552.147 of the Government Code.¹ You state that the district has redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).² You also state that the district will release some of the responsive information to the requestor. You claim that a portion of the requested information is not subject to the Act. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.111, 552.117, 552.130,

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

²We note that the United States Department of Education Family Policy Compliance Office (the "DOE") has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

552.135, and 552.137 of the Government Code.³ We have considered your arguments and reviewed the submitted information.⁴

Initially, you claim that Exhibits J and K are not subject to the Act. The Act 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." *Id.* § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). After reviewing Exhibit J, we agree that the submitted e-mail does not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the district. *See* Gov't Code § 552.021; *see also* 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). Thus, we conclude that Exhibit J is not subject to the Act, and need not be released in response to this request.

You also argue that Exhibit K, which consists of handwritten notes by a district employee, is also not public information under section 552.002. In support of your position, you cite to Open Records Decision No. 77 (1975), where we concluded that personal notes made by individual faculty members for their own use as memory aids were not subject to the Act. However, this office has issued numerous rulings since the issuance of Open Records Decision No. 77 concluding that information collected, assembled, or maintained in connection with the transaction of official business, including "personal" notes, is subject to

³Although you raise section 552.101 in conjunction with the attorney-client privilege and the work product privilege, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). You also raise sections 552.103, 552.125, and 552.136 of the Government Code as exceptions to disclosure of the requested information. However, you have provided no arguments regarding the applicability of these sections. In addition, you have not provided any arguments regarding the applicability of the work product privilege, which you erroneously raise under section 552.107. Since you have not submitted arguments concerning these exceptions and privilege, we assume that you no longer urge sections 552.103, 552.125, and 552.136 or the work product privilege. *See* Gov't Code §§ 552.301(b), (e), .302.

We also note that by letter dated August 12, 2008, you have withdrawn your claims under section 552.108 of the Government Code.

⁴We 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.

the Act. *See, e.g.*, Open Records Decision Nos. 626 (1994) (handwritten notes taken during oral interview by Texas Department of Public Safety promotion board members are public information), 327 (1982) (notes made by school principal and athletic director relating to teacher “were made in their capacities as supervisors of the employee” and constitute public information), 120 (1976) (faculty members’ written evaluations of doctoral student’s qualifying exam subject to predecessor of Act). You admit that the handwritten notes in Exhibit K relate to district matters. Thus, the information was created as part of the district’s transaction of official business. *See* Gov’t Code § 552.002. Therefore, we conclude that Exhibit K is subject to the Act. As you raise no arguments against the disclosure of Exhibit K, it must be released to the requestor.

We next note that the document in Exhibit L was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-07653 (2008). In that ruling, we concluded that the district must withhold portions of the document submitted in Exhibit L under section 552.135 of the Government Code, but must release the remaining information in the document. As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, the district must continue to rely on this ruling as a previous determination and withhold or release the information in Exhibit L in accordance with Open Records Letter No. 2008-07653.⁵ *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

We next note a portion of Exhibit H consists of a completed investigation conducted by the district that is subject to section 552.022 of the Government Code, which provides in relevant part:

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). A completed investigation under section 552.022 must be released unless it is confidential under other law or excepted from disclosure under section 552.108 of the Government Code. You claim that the completed investigation is

⁵Our determination that Exhibit L is subject to a previous determination is dispositive of the district’s arguments under section 552.135 of the Government Code.

excepted from disclosure under sections 552.111 and 552.116 of the Government Code. However, sections 552.111 and 552.116 are discretionary exceptions to public disclosure that protect the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469. Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). As such, sections 552.111 and 552.116 are not other law that make information confidential for the purposes of section 552.022. Thus, the district may not withhold the investigation in Exhibit H, which we have marked, under either section 552.111 or section 552.116 of the Government Code. As you raise no further exceptions to the disclosure of the marked investigation in Exhibit H, it must be released to requestor.

We next address your arguments under section 552.111 of the Government Code for the information in Exhibit H that is not subject to section 552.022 and for Exhibit I. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined that section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, and opinions that reflect the policymaking processes of the governmental body. *See* Open Records Decision No. 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 is not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995). Moreover, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *See* ORD No. 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

When determining if an interagency memorandum is excepted from disclosure under section 552.111, we must consider whether the agencies between which the memorandum is passed share a privity of interest or common deliberative process with regard to the policy matter at issue. *See* Open Records Decision No. 561 at 9 (1990).

The remaining information in Exhibit H consists of a letter from Texas Education Agency (the "TEA") to the district agreeing with the district's findings in its investigation and setting forth federal and state requirements. You do not explain how the district and the TEA share a privity of interest or common deliberative process with regard to any policy matter. Thus, you have failed to demonstrate the applicability of section 552.111 to the remaining information in Exhibit H. Exhibit I, as you acknowledge, consists of an e-mail from a district administrator to other district administrators that seeks advice on a personnel matter pertaining to a specific district employee. Thus, the e-mail constitutes a routine personnel-related document. Thus, you have failed to demonstrate the applicability of section 552.111 to Exhibit I. As you raise no further arguments against the disclosure of Exhibit I, it must be released to the requestor.

You also assert that the information in Exhibit H that is not subject to section 552.022 is excepted from disclosure under section 552.116 of the Government Code. Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) 'Audit' means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) 'Audit working paper' includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state that the remaining information in Exhibit H consists of audit working papers of the district. You contend that it is clear from the content of the documents that Exhibit H deals with an audit. Although you state that this audit was required by and provided to the TEA, you do not provide this office with the statute that required the audit. *Id.* § 552.116(b)(1) (defining an audit for the purposes of section 552.116 as an audit required by statute). Even if we presume that the district conducted an audit required by statute, the remaining information in Exhibit H consists of correspondence from an outside agency, the TEA, sent to the district after the district had already completed its audit and investigation. You have not explained, nor can we discern, how this information was prepared or maintained in conducting an audit or preparing the audit report. *Id.* § 552.116(b)(2) (defining audit working paper). Accordingly, we find that you have failed to demonstrate the applicability of section 552.116 to the remaining information in Exhibit H. As you raise no further exceptions against the disclosure of the remaining information in Exhibit H, it must be released to the requestor.

We next note that Exhibit F contains medical records. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes such as the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 provides in pertinent part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of the Act. *See* Open Records Decision No. 598 (1991). This office has also concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Further, information that is subject to the MPA also includes information that was obtained from medical records. *See* Occ. Code. § 159.002(a), (b), (c); *see also* Open Records Decision No. 598 (1991). Medical records must be released upon the governmental body's receipt of the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the

records. *See* Open Records Decision No. 565 at 7 (1990). We have marked medical records in Exhibit F that may only be released in accordance with the MPA.⁶

We next address your argument against the disclosure of the documents in Exhibits E and M. Section 552.101 also encompasses section 21.355 of the Education Code which provides that, “[any] document evaluating the performance of a teacher or administrator is confidential.” This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. This office also concluded that an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. ORD 643. In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

The information in Exhibit E demonstrates that one of the individuals who is the subject of the submitted evaluations held an administrator certificate under subchapter B of chapter 21 of the Education Code and was performing the functions of an administrator at the time of the evaluations. Additionally, the information in Exhibit E demonstrates that another individual who is the subject of one of the submitted evaluations held a teacher certificate and was performing the functions of a teacher at the time of the evaluation. Further, you state and provide documentation that the district’s educational diagnostician, whose information is included in Exhibits E and M, held the appropriate teaching certificate and was performing the functions of a teacher at the time of the evaluations. *See* Educ. Code §§ 21.003 (teacher certificate required for employment of educational diagnostician), .101 (defining teacher as including other full-time professional employee who is required to hold a certificate issued under Subchapter B). *See also* 19 T.A.C. § 230.316 (setting forth teaching certificate requirement for educational diagnostician). We agree that some of the documents in Exhibit E constitute evaluations of the performance of a teacher or of an administrator for the purpose of section 21.355. Therefore, the documents we have marked in Exhibit E are confidential under section 21.355 and must be withheld under section 552.101 of the Government Code. However, you do not provide any arguments explaining how the remaining documents in Exhibit E constitute evaluations of the performance of a teacher or an administrator for the purpose of section 21.355. Further, upon review of the documents in Exhibit M, we find that they are merely memoranda setting forth

⁶As our ruling is dispositive for this information, we need not address your argument against the disclosure of the marked medical records.

a disagreement between district teachers and an agreement related to the disagreement and do not evaluate the teachers as contemplated by section 21.355. Therefore, the district may not withhold the remaining documents in Exhibit E or any of the documents in Exhibit M under this section.

You assert that Exhibits F and M are excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" Gov't Code § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. See Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. See *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), the Texas Supreme Court held that information is protected by common-law privacy if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of a legitimate concern to the public. To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82.

We understand you to argue that Exhibits F and M should be withheld in their entirety under section 552.102(a). Exhibit M pertains solely to public employees' job performance and work conduct. Additionally, most of the information in Exhibit F pertains to public employees' job performance and work conduct. This office has stated, in numerous decisions, that information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and therefore generally not protected from disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute employee's private affairs), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow). Thus, the district may not withhold Exhibits F and M in their entireties under section 552.102(a).

We note, however, that a small portion of information in Exhibits B and M is confidential under common-law privacy. 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. *Industrial Foundation*, 540 S.W.2d at 683. This office has also found that some kinds of medical information or information indicating disabilities or specific illnesses are confidential under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs,

illnesses, operations, and physical handicaps). However, not all medical information is protected under common-law privacy. In this instance, the information you seek to withhold in Exhibit F only tangentially refers to health issues. Instead Exhibit F pertains to staff coverage and the job performance of district employees, which is of legitimate public interest. *See* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). We have marked a small amount of information in Exhibits B and M that is intimate and of no legitimate public interest. Accordingly, this information must be withheld under section 552.102(a) of the Government Code.

Next, you claim that portions of a district employee's transcript in Exhibit C are excepted under section 552.102(b). Section 552.102(b) excepts from disclosure all information from transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the employee's name, courses taken, and degree obtained, the district must withhold the information in the submitted transcript pursuant to section 552.102(b) of the Government Code.

Next, you assert that the documents in Exhibit D are excepted from disclosure under section 552.107(1) of the Government Code, which protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5).

Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no writ). Moreover, because the client may elect to waive the

privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state that the first seven pages in Exhibit D reveal communications between the district's outside counsel and district administrators and you have specifically identified each of the individuals at issue. You represent that these communications were made for the purpose of facilitating the rendition of professional legal services. You also represent that the confidentiality of these communications has been maintained. Based on your representations and our review, we conclude that section 552.107 is applicable to the first seven pages in Exhibit D, which we have marked. You also state that the remaining four pages in Exhibit D should be excepted under section 552.107 because they were created by the district's outside counsel for the use of district administration in preparation of a grievance regarding an employee. However, you do not explain how these pages constitute communications for the purposes of 552.107. Therefore, you have failed to demonstrate the applicability of section 552.107 to the remaining documents in Exhibit D. As you raise no further exceptions to the disclosure of the remaining documents in Exhibit D, they must be released to the requestor.

We next address your argument that the information you have marked in Exhibit B is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may only be withheld 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 of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We note that you have not included the election forms documenting, nor do you indicate, that the employees whose information is at issue requested confidentiality pursuant to section 552.024. Accordingly, if these employees timely elected confidentiality, the district must withhold the information you have marked in Exhibit B, as well as the additional information we have marked in Exhibits B, E, F, and M, under section 552.117(a)(1). If the employees did not timely elect, the district may not withhold any of their personal information under section 552.117.

We now address your assertion that the e-mail addresses you have marked in Exhibit A are excepted from disclosure under section 552.137 of the Government Code. Section 552.137

states that “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)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). You do not state that the owners of these e-mail addresses have consented to their public disclosure. We note, however, that section 552.137 protects privacy. Thus, the requestor has a right of access to his client’s e-mail address, which we have marked for release.⁷ *See generally* Gov’t Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles). However, the district must withhold the remaining e-mail addresses you have marked in Exhibit A under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure.

Finally, you claim that Exhibit G is excepted under section 552.139 of the Government Code, which provides as follows:

(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, or 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.

Id. § 552.139. You have failed demonstrate how any of the information in Exhibit G 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 this information consists of a computer network vulnerability assessment or report as contemplated in section 552.139(b). Consequently, Exhibit G may not be withheld under

⁷If the district receives another request for the e-mail address we have marked for release from a person who would not have a special right of access to the e-mail address, the district should resubmit that information and request another decision. *See* Gov’t Code §§ 552.301(a), .302; Open Records Decision No. 673 (2001).

section 552.139 of the Government Code. As you raise no other exceptions against its disclosure, you must release Exhibit G to the requestor.

In summary, the district need not release Exhibit J which is not subject to the Act. The district must withhold or release the information in Exhibit L in accordance with Open Records Letter No. 2008-07653. The marked medical records in Exhibit F may only be released in accordance with the MPA. The district must withhold the documents we have marked in Exhibit E under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must also withhold the information we have marked in Exhibits B and M under section 552.102(a) of the Government Code. With the exception of the employee's name, courses taken, and degree obtained, the district must withhold the information in the transcript in Exhibit C pursuant to section 552.102(b) of the Government Code. The district may withhold the documents we have marked in Exhibit D under section 552.107 of the Government Code. If the employees whose information is at issue timely elected confidentiality, the district must withhold the information you have marked in Exhibit B, as well as the additional information we have marked in Exhibits B, E, F, and M, under section 552.117(a)(1). If the employees did not timely elect, the district may not withhold any of their personal information under section 552.117. With the exception of the e-mail address we have marked for release, the district must withhold the e-mail addresses you have marked in Exhibit A under section 552.137 of the Government Code, unless the owners affirmatively consent to their disclosure. 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). If the governmental body does not file suit over 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 319482

Enc. Submitted documents

c: Mr. Kevin F. Lungwitz
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