ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2008

Ms. Frances Broussard
Wells, Peyton, Greenberg & Hunt, L.L.P.
P.O. Box 3708
Beaumont, Texas 77704-3708

OR2008-13271

Dear Ms. Broussard:

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# 323964.

The Beaumont Independent School District (the "district"), which you represent, received a request for (1) copies of all e-mails sent or received by the district's Police Chief in a specified time period, (2) a printout of the browser history and cache for all district computer terminals used by the Police Chief, and (3) a list showing the sender's name, recipient's name, date and time sent, and subject of all e-mails sent or received by each officer of the district's police department in the same time period.[1] You inform us the district has released some of the responsive information to the requestor. You assert the submitted e-mails are not subject to the Act or, alternatively, portions of the submitted information are excepted

[1]We note the requestor amended his request and again modified his request to exclude students' names, officers' home addresses, family information, and personal cell phone numbers, driver's license numbers, and pending investigations or information not resulting in conviction or arrest. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

from disclosure under section 552.137 of the Government Code.[2] We have considered your arguments and reviewed the submitted representative sample of information.[3]

You assert the submitted e-mails are not subject to disclosure under the Act. The Act is applicable to "public information," as defined by section 552.002 of the Government Code. Section 552.002(a) provides that "public information" consists of

> 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.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You contend, however, that the submitted e-mails are personal in nature and do not constitute public information. Having reviewed the information in question, we agree these e-mails are not public information for the purposes of section 552.002. We therefore conclude the submitted e-mails are not subject to the Act and need not be released to the requestor. *See* Open Records Decision No. 635 at 4 (1995) (Gov't Code § 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). As our ruling is dispositive, we need not address your claim under section 552.137 of the Government Code.

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

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[2]Although you raise section 552.002 of the Government Code, we note this section is not an exception to public disclosure under the Act. Rather, section 552.002 is a provision of the Act that defines "public information" for purposes of the Act.

[3]We assume 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 those records contain substantially different types of information than that submitted to this office.

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).

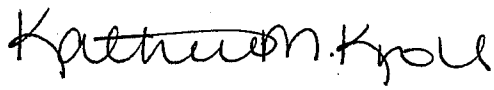
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Katherine M. Kroll
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Open Records Division

KMK/eeg

Ref: ID# 323964

Enc. Submitted documents

c: Mr. Jerry Jordan
News Editor
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(w/o enclosures)