



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2010

Ms. Haley Turner  
Attorney for Willis Independent School District  
Walsh, Anderson, Brown, Aldridge & Gallegos and Green P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2010-07184

Dear Ms. Turner:

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# 379830.

The Willis Independent School District (the "district"), which you represent, received two requests from the same requestor for information relating to the Willis Athletic Booster Club (the "club") and the Willis ISD Education Foundation (the "foundation"). You state you have released some information to the requestor. You claim a portion of the requested information is not subject to the Act. You claim the remaining requested information is excepted from disclosure under section 552.107 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you assert the information in Exhibit 5A relating to the club, the information in Exhibit 5B relating to the foundation, and the district e-mails in Exhibit 5C are not subject to the Act. The Act applies to "public information," which is defined in section 552.002 of the Government Code as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

<sup>1</sup>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 that those records contain substantially different types of information than that submitted to this office.

(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. 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). The Act also encompasses information that a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov't Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

You explain the information in Exhibit 5A and Exhibit 5B is not maintained by or for the district. You further state the district does not own or have a right of access to this information.<sup>2</sup> You inform us the club is a nonprofit organization with the goal of promoting good fellowship and encouraging sponsorship and support of district schools, and its records do not concern the regular business of the district. You also state, and provide documentation showing, "[n]o formal agreement exists to govern the relationship between [the club] and the [d]istrict." You further explain although "some members or officers of the [club] are also employees of the [d]istrict, their status as volunteers with the [club] is not a function within the scope of their employment." Likewise, you explain the foundation is a nonprofit organization supported by donations of time and money from community members. You further state several district employees volunteer their time as members of the foundation, including the district's business manager, who serves as the foundation's treasurer. You inform us that although the business manager stores the foundation's financial records in her district office, she "does not maintain these records within the scope of her employment with the [d]istrict, and does not utilize these records in the performance of her official duties[.]" You also provide affidavits from the club president and foundation chair stating the district does not own or have the right of access to information belonging to these organizations. Based on your representations and our review, we agree the information in Exhibit 5A and Exhibit 5B is not "public information" under the Act because the records are not collected, assembled, or maintained by or for the district. *See* Gov't Code § 552.002. Therefore, this information is not subject to the Act and need not be released in response to this request.

You inform us Exhibit 5C consists of personal e-mails that have no connection with district business and represent incidental use of district e-mail by district employees under the district's electronic communications policy. You have provided us with a copy of this policy. Based on your representations and our review, we agree most of the information in

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<sup>2</sup> You inform us the club and the foundation granted the district access to the submitted information for the purpose of requesting a decision from this office. *See* Gov't Code § 552.301(e)(1)(D). This office may not disclose information submitted under section 552.301. *Id.* § 552.3035.

Exhibit 5C 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 id.* § 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). However, upon review, we find one of the e-mails you assert is not subject to the Act was collected or assembled or is maintained in connection with the transaction of official district business; thus, this e-mail constitutes “public information” as defined by section 552.002(a). Accordingly, this e-mail is subject to the Act. As you raise no other argument against disclosure of this information, the e-mail, which we have marked, must be released.

Section 552.107(1) of the Government Code protects information that comes within the attorney-client privilege. Gov’t Code § 552.107(1). 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 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). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. *See* 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, 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 pet.). 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 Exhibit 6 consists of confidential communications between the district’s board of trustees, employees, attorneys, and their agents. You state these communications were made in furtherance of the rendition of legal services to the district, and you inform this office

these communications have remained confidential. Based on your representations and our review, we agree the information in Exhibit 6 constitutes privileged attorney-client communications. Therefore, section 552.107 of the Government Code is generally applicable. However, one of the individual e-mails contained in one of the submitted e-mail strings consists of a communication with a non-privileged party. To the extent this non-privileged e-mail, which we have marked, exists separate and apart from the submitted e-mail string, it may not be withheld under section 552.107.

In summary, except for the e-mail in Exhibit 5C we have marked for release, the information in Exhibit 5A, Exhibit 5B, and Exhibit 5C is not subject to the Act, and the district need not release this information. The district may withhold the e-mails in Exhibit 6 under section 552.107 of the Government Code. However, to the extent the non-privileged e-mail we have marked in Exhibit 6 exists separate and apart from the submitted e-mail chain, the district must release it.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/rl

Ref: ID# 379830

Enc. Submitted documents

c: Requestor  
(w/o enclosures)