



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2011

Mr. Andrew D. Clark
Powell & Leon, L.L.P.
1706 West Sixth Street
Austin, Texas 78703

OR2011-11808

Dear Mr. Clark:

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# 427129.

The Princeton Independent School District (the "district"), which you represent, received a request for e-mails sent from a named employee to two specified e-mail addresses. You claim that the submitted information is not subject the Act. We have considered your argument and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the district did not comply with the requirements of section 552.301 of the Government Code in requesting a decision from this office. Section 552.301 prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Under section 552.301(d), a governmental body must provide the requestor with (1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general, and (2) a copy of the governmental body's written communication to the attorney general within ten business days of receiving the request for information. *Id.* § 552.301(d). The district states, and submits documentation demonstrating, it received the request for information on May 27, 2011. The district informs us it observed a holiday and was closed for business on May 30, 2011. Thus, the district's ten business-day deadline was June 13, 2011. The district requested a ruling from this office on June 10, 2011 and its brief to this office contains a notation the requestor was copied on the brief on that date. Therefore, we conclude the district complied with the requirements of section 552.301 and will address its arguments.

The district asserts the submitted information, which consists of e-mails, is not subject to the Act. The Act is only applicable to "public information." *See id.* § 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). You state the submitted e-mails consist of personal e-mails that do not relate to the transaction of official district business. *See* 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). You further state these e-mails represent the employee’s personal use of his district e-mail account under the district’s electronic communications policy. Upon review of the information at issue, we agree most of the submitted e-mails do 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. Thus, we conclude the e-mails we have marked are not subject to the Act, and need not be released in response to this request. However, we find the remaining e-mails, which pertain to the scheduling of district athletic events, were collected or assembled or are maintained in connection with the transaction of official district business; thus, these e-mails constitute “public information” as defined by section 552.002(a). Accordingly, these e-mails, which we have marked, are subject to the Act.

We note the e-mails at issue contain personal e-mail addresses subject to section 552.137 of the Government Code.¹ 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 id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their disclosure.² The remaining information in the marked e-mails must be released.

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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We note Open Records Decision No. 684 (2009) was issued as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

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, 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 427129

Enc. Submitted documents

c: Requestor
(w/o enclosures)