



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 9, 2011

Mr. Brandon S. Davis
Attorney for Gulf Coast Educational Consortium
Fielder & Gunter
1517 Trinity Street
Liberty, Texas 77575

OR2011-18164

Dear Mr. Davis:

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# 438501.

The Gulf Coast Educational Consortium ("GCEC"), which you represent, received a request for communications sent to or from a named individual from January 2010 to the date of the request.¹ We understand you have released some of the requested information with any student identifying information redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You state that, as permitted by section 552.024(c) of the Government Code, you will redact information

¹You note GCEC received a clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of the DOE's letter to this office is posted on the Attorney General's website at: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

subject to section 552.117 of the Government Code.³ You claim some of the submitted information is not subject to the Act. Additionally, you claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we address your argument that Exhibit G is not public information subject to the Act. The Act applies to “public information,” which is defined by 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 (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; *see also id.* § 552.021. Information is generally subject to the Act when it is held by a governmental body and it relates to the official business of a governmental body, or is used by a public official or employee in the performance of official duties. 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). You contend the e-mails in Exhibit G are not public information subject to the Act. You state the e-mails at issue are personal in nature. You argue the e-mails at issue have no connection to GCEC’s business and represent permitted incidental use of GCEC’s e-mail system. Upon review, we agree information in Exhibit G 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 GCEC. *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). Thus, these e-mails do not constitute public information as defined by section 552.002 and GCEC is not required to release Exhibit G under the Act.

The remaining information includes e-mail addresses subject to section 552.137 of the Government Code, which 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). The e-mail addresses at issue are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which you have marked, must be withheld under section 552.137 of the

³Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c); Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2.

Government Code, unless the owners of the addresses have affirmatively consented to their release.⁴

In summary, the e-mails in Exhibit G do not constitute public information as defined by section 552.002 and GCEC is not required to release this information under the Act. GCEC must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The remaining information 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.

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 438501

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note this office issued Open Records Decision No. 684 (2009), 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.