



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 10, 2022

Mr. Joseph E. Hoffer  
Counsel for IDEA Public Schools  
Schulman, Lopez, Hoffer & Adelstein, L.L.P.  
845 Proton Road  
San Antonio, Texas 78258

OR2022-13409

Dear Mr. Hoffer:

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# 946822.

IDEA Public Schools ("IDEA"), which you represent, received a request for all e-mails and attachments sent to a specified e-mail address during a stated period of time. We note IDEA is withholding motor vehicle record information pursuant to section 552.130(c) of the Government Code, social security numbers pursuant to section 552.147(b) of the Government Code, and e-mail addresses under section 552.137 of the Government Code in accordance with Open Records Decision No. 684 (2009).<sup>1</sup> You claim the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.107 and 552.126 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

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<sup>1</sup> Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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. *See id.* § 552.147(b). Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

<sup>2</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

You contend the submitted information is not subject to the Act. The Act is applicable only to “public information.” *See* Gov’t Code §§ 552.002, .021. Section 552.002(a) defines “public information” as the following:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body:

(2) for a governmental body and the governmental body:

(A) owns the information:

(B) has a right of access to the information: or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.

*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). Upon review, we find public money was spent for the purpose of collecting and assembling the information at issue. *See id.* § 552.002(a)(2)(C). Furthermore, the information pertains to the transaction of official business of IDEA. Thus, we conclude the submitted information constitutes “public information” as defined by section 552.002(a) of the Government Code and is subject to the Act. Therefore, we will consider your arguments against disclosure of the submitted information.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov’t Code § 552.107. 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. *See* 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 “to facilitate 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*

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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.

*Tex. 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 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: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit 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. *See Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain 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 the submitted information consists of privileged communications involving IDEA’s retained counsel and potential applicants for a position at IDEA. However, you have not demonstrated these individuals are privileged parties. Therefore, you have failed to establish how the submitted information constitutes privileged attorney-client communications for the purposes of section 552.107(1). Accordingly, IDEA may not withhold any portion of the submitted information under section 552.107(1) of the Government Code.

Section 552.126 of the Government Code excepts from disclosure the “name of an applicant for the position of superintendent of a public school district . . . except that the board of trustees must give public notice of the name or names of the finalists being considered for the position at least 21 days” before a vote or final action is taken. Gov’t Code § 552.126. Furthermore, this protection from disclosure extends not only to the name of the individual, but also to any information tending to identify the individual. *See Open Records Decision No. 540* (1990) (interpreting section 552.123—which, in language similar to section 552.126, protects identities of applicants for chief executive officer of institution of higher education—as applying to identities, rather than just names of applicants). This office has previously held the type of information that identifies individuals in such cases includes, but is not limited to, resumes, professional qualifications, membership in professional organizations, dates of birth, current positions, publications, letters of recommendation, or any other information that can be uniquely associated with a particular applicant. *Id.* at 4.

You state the submitted information identifies individuals who applied for IDEA’s superintendent position. You inform us, at the time IDEA received the request for information, IDEA had not selected finalists for the superintendent position. Based on your

representations and our review, we agree some of the submitted information identifies particular applicants for the position of superintendent. Accordingly, IDEA must withhold the information we have marked under section 552.126 of the Government Code. *See* Educ. Code § 12.1051(b) (any requirement in the Act that concerns the availability of information that applies to a school district, the board of trustees of a school district, or public-school students applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or students attending an open-enrollment charter school). However, we find you have failed to demonstrate the applicability of section 552.126 to the remaining information. Therefore, IDEA may not withhold any of the remaining information under section 552.126 of the Government Code.

Although you have redacted certain motor vehicle record information under section 552.130(c) of the Government Code, we note the remaining information contains additional information subject to section 552.130. Section 552.130 provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov't Code § 552.130(a). Accordingly, IDEA must withhold the motor vehicle record information you redacted and the additional information we have marked and indicated under section 552.130 of the Government Code.

Although you have redacted some personal e-mail addresses subject to section 552.137 of the Government Code pursuant to Open Records Decision No. 684, we note the remaining information includes an unredacted e-mail address of a member of the public that is subject to section 552.137. 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). *Id.* § 552.137(a)-(c). The e-mail address we marked is not one of the types specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, IDEA must withhold the e-mail addresses you redacted and the additional e-mail address we have marked under section 552.137, unless the owner of the address affirmatively consents to its release.

In summary, IDEA must withhold the information we have marked under section 552.126 of the Government Code. IDEA must withhold the motor vehicle record information you marked and the additional information we have marked and indicated under section 552.130 of the Government Code. IDEA must withhold the e-mail addresses you redacted and the additional e-mail address we have marked under section 552.137 unless the owner of the address affirmatively consents to its release. IDEA must release the remaining information.<sup>3</sup>

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.

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<sup>3</sup> The information being released contains a social security number. 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. *See* Gov't Code § 552.147(b).

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Joseph Hoggatt  
Assistant Attorney General  
Open Records Division

JWH/eb

Ref: ID# 946822

Enc. Submitted documents

c: Requestor  
(w/o enclosures)