



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1998

Ms. Cheryl N. Elliott
General Counsel
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

OR98-1928

Dear Ms. Elliott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 117474.

Texas Southern University (the "university") received a request for information under the Open Records Act on May 15, 1998. The information requested was for:

1. All communications, documents, e-mail, memos, or other documents or information produced by any official serving in any capacity at Texas Southern University to and/or regarding "TSU on the Move."
2. All communications, documents, e-mail, memos, or other documents or information produced by any official serving in any capacity at Texas Southern University regarding LaShundra Ennett in her capacity as SGA President.

On June 1, 1998, this office received your request for an attorney general decision relating to this request for information. Your request for attorney general decision was dated May 28, 1998 and postmarked 5/29/98. In this request for an attorney general decision, you sought to withhold certain requested records as "relating to the disclosure of personnel information which would result in a clearly unwarranted invasion of personal privacy," apparently urging section 552.102 (a) of the Government Code as an exception to the disclosure requirement for the records of LaShundra Ennett. Your request did not state an exception to the disclosure requirement for records responsive to the request for "TSU on the

Move" information. Your request for attorney general opinion did not include a copy of the specific information requested, or a representative sample of the information.

On June 10, 1998, by letter sent via facsimile, our office acknowledged receipt of the above referenced request for attorney general opinion and instructed you that section 552.301(b) of the Government Code required that you submit, within 15 business days of your receipt of the request for information, 1) a copy of the written request you received, 2) an explanation as to why the exceptions you have raised apply to those records, and 3) a copy of the requested documents.

On June 11, 1998, by letter sent via facsimile, our office informed you that you had failed to submit the information required by section 552.301(b) of the Government Code. Pursuant to section 552.303(c) of the Government Code, we requested that you provide additional information to our office within seven days from the date of receiving the notice. This notice letter instructed you as follows:

You must submit a copy of the specific information requested or a representative sample of the information if the documents are numerous and repetitive.

The notice further stated that, under section 552.303(e) of the Government Code, failure to comply would result in the legal presumption that the requested information is public information.

On June 24, 1998, our office received your letter, dated June 18, 1998, and apparently written in response to the above referenced notice of June 11, 1998. Your response did not include the requested information, rather you indicated that your office was uncertain as to what information was sought. You also indicated that your office had unsuccessfully attempted to obtain clarification of the request.

A governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 561 (1990).

A governmental body may request clarification when a request is unclear. Government Code Section 522.222 (b). The ten-day deadline does not start to run during the time that the requestor and the governmental body attempt to resolve access to the records informally and there is a legitimate confusion as to the scope of the request. Open Records Decision No. 333 (1982) However, the requirement to request an open records decision within 10 days comes into play when a governmental body denies access to requested information or asserts an exception to public disclosure of information. *Conely v. Peck*, 929 S.W. 2d 630 (Tex. App.-- Austin 1996, no writ)

In your request for an attorney general opinion, dated May 28, 1998, you represented that your agency "denied the Open Records Request." Hence, the ten day period had come

into play at the time of your original letter. That time period began with your receipt of the request for information on May 15, 1998 and expired, ten working days later, on June 1, 1998. Having requested an attorney general decision within this time period, that request is subject to the provisions of section 552.301(b) of the Government Code. As previously discussed, you were notified of those requirements and placed on notice to provide the required information, pursuant to section 552.303 of the Government Code.

Pursuant to Government Code section 552.303(d), your agency had seven calendar days, from the date of the notice, to provide the information requested by our office in our June 11, 1998 notice to you. You did not timely provide our office with that information. Therefore, as provided by Government Code section 552.303(e), the information that is the subject of this request for information is presumed to be public information.

Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Government Code § 552.302); Open Records Decision No. 319 (1982). You have not shown compelling reasons why the information at issue should not be released. The information is therefore presumed to be public.

The university must release all information responsive to this request other than information that is considered to be confidential by law.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 117474

cc: James Douglas
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