



July 1, 2002

Ms. Carol Longoria
Public Information Coordinator
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2002-3566

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165016.

The University of Texas at Tyler (the “university”) received a request for eight categories of information, including “all memos, letters, reports, directives, e-mail, telephone message slips, or other writings internal or external produced from Jan. 1, 2002 to the [date of the request] pertaining to the Patriot student newspaper.” You state that the university has released information responsive to all of the categories in the request except for the category relating to the student newspaper. You indicate that the university attempted to obtain such information, to the extent it exists, from the student newspaper faculty advisor, a university employee, but the advisor has not produced any information.¹ Rather, you state that the advisor claims that any responsive information is excepted from disclosure under section 552.101 of the Government Code.

In a previous ruling, Open Records Letter No. 2001-2594 (2001), this office dealt with the issue of whether copies of student notes and recordings from an investigation conducted by a student newspaper were public information. As we noted in that ruling, “public information” is defined as:

¹Although you contend in your correspondence with this office that the student newspaper has refused to furnish responsive information, we have since clarified that the university is not attempting to obtain information maintained by the student newspaper or the student staff of the newspaper. Rather, you indicate that the university is attempting to obtain responsive information maintained by the faculty advisor to the newspaper.

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.

We determined that the notes and recordings were not public information because the information was not collected, assembled, or maintained by or for the university, and the university did not appear to have a right of access to the information. We based this decision, in large part, on the fact that the requested notes and recordings were produced and maintained by the student staff of the newspaper.

The situation before us in this file differs from that in Open Records Letter No. 2001-2594 (2001) because the potentially responsive information is not held by students, but by an employee of the university. To the extent the advisor maintains information responsive to the request in her capacity as advisor or employee of the university, we find that such information is maintained by the university in connection with the transaction of its official business and is, therefore, "public information" subject to the Public Information Act (the "Act"). See Gov't Code § 552.002(a) (defining public information); Open Records Decision No. 635 at 3 (1995) (records relating to governmental body's official business and held by individual member of governmental body are "public information" subject to the Act).

A governmental body that seeks to withhold public information must, among other things, request a ruling from this office raising exceptions to disclosure of the requested information, provide general written comments stating the reasons why the stated exceptions apply to the requested information, and provide a copy or representative sample of the requested information. Gov't Code § 552.301(a), (e). You state that the student newspaper faculty advisor has indicated she believes that information possibly responsive to the instant request "is confidential pursuant to §552.101, of the *Government Code*, as protected by the First Amendment." Therefore, you have asked this office for a ruling concerning whether information held by the advisor is excepted from disclosure under section 552.101 of the Government Code. However, neither you nor the advisor has provided comments stating the reasons why section 552.101 applies to the information at issue. Furthermore, you have not provided a copy or representative sample of the requested information to our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason for withholding information exists if the information is confidential by law. *See* Open Records Decision No. 150 (1977). Despite the advisor's contention that the information at issue is confidential, we have no basis for determining the information is confidential because the information has not been provided to this office. Therefore, we have no choice but to order the university to release any responsive information maintained by the advisor in her capacity as advisor or employee. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

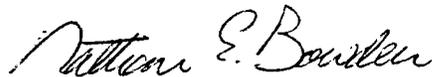
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/sdk

Ref: ID# 165016

c: Mr. Glenn M. Evans
P.O. Box 1792
Longview, Texas 75606