



August 21, 2002

Mr. Scott A. Kelly  
Deputy General Counsel  
Texas A&M University System  
301 Tarrow, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR2002-4663

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167422.

The Board of Regents of the Texas A&M University System (the "system") received a request for several categories of information regarding applicants for the position of president of Texas A&M University (the "university"). You indicate that you will release some information to the requestor.<sup>1</sup> In addition, you indicate that you have informed the requestor that the system does not maintain information that is responsive to certain categories of the request.<sup>2</sup> You claim that portions of the remaining requested information are excepted from disclosure under sections 552.123 and 552.136 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.123 excepts from required public disclosure the "name of an applicant for the position of chief executive officer of an institution of higher education ... except that the governing body of the institution must give public notice of the name or names of the

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<sup>1</sup>Although you initially sought to withhold identifying information for the individual who was subsequently chosen as president of the university, you have since informed this office that you will release that information to the requestor and wish to withdraw that portion of your ruling request. Therefore, this ruling does not address the identifying information of that individual.

<sup>2</sup>It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to create or prepare new information. See Attorney General Opinion JM-672 (1987), H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975).

<sup>3</sup>We note that section 552.137 of the Government Code is identical to the section 552.136 that the system asserts makes some of the submitted e-mail addresses confidential.

finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person.”

The university is an institution of higher education. *See, e.g.*, Educ. Code §61.003. You inform us that the president is the “chief executive officer” and is appointed by the system’s board of regents in accordance with section 85.17(b) of the Education Code. You have marked information that you assert identifies the unsuccessful candidates for the university’s presidency and that you seek to withhold under section 552.123. Based on your representations and our review of the information, we conclude that, pursuant to section 552.123, you may withhold the information that you have marked as identifying the unsuccessful candidates for the presidency. *See* Open Records Decision No. 540 (1990).<sup>4</sup>

You have also marked e-mail addresses that you assert are excepted from disclosure. Section 552.137 of the Government Code provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release. [Emphasis added.]

Section 552.137 requires the system to withhold e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the system, unless the members of the public have affirmatively consented to their release. As there is no indication that the members of the public have consented to release of the e-mail addresses in question, pursuant to section 552.137 of the Government Code, the system must withhold the e-mail addresses of members of the public, which we have marked.

In summary, the system may withhold the information that it has marked as identifying the unsuccessful candidates for the university presidency. In addition, all of the e-mail addresses that we have marked must be withheld. All other submitted information must be released.

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

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<sup>4</sup>As indicated above, you inform us that a finalist for the presidency position has already been named and that a president has already been appointed. You further indicate that you publicly announced the name of this finalist within the time period prescribed by section 552.123.

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).

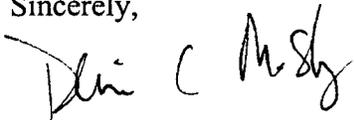
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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); *Texas Department of Public 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 167422

Enc. Submitted documents

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(w/o enclosures)