OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

November 15, 2002

Mr. William L. Fly
University Attorney
Southwest Texas State University
601 University Drive
San Marcos, Texas 78666-4615

OR2002-6535

Dear Mr. Fly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172243.

Southwest Texas State University (the "university") received a written request for all correspondence authored by a named faculty member that was addressed to various other university employees and state officials. You do not contend that the requested information is excepted from required public disclosure under the Texas Public Information Act (the "PIA"). You inform us, however, that the named faculty member, who has filed a lawsuit against the university, has refused to provide the requested records so that the university may comply with the records request. Consequently, you were unable to submit the requested records to our office for review. The faculty member contends that he may withhold the records from the university pursuant to the "litigation" exception, section 552.103 of the Government Code.

We note at the outset that this office has also received a request for an open records decision on this matter from the attorney who is representing the faculty member in his lawsuit against the university. Although the faculty member's personal attorney has submitted arguments to this office as to why the requested records should not be released, the attorney does not represent the university and represents the faculty member only in a private capacity. We therefore conclude that the faculty member's personal attorney lacks standing under the PIA to request an open records decision from this office regarding this matter. *See* Gov't Code § 552.301 (authorizing only "governmental body" to request open records decisions); Open Records Decision No. 542 (1990) (same), Consequently, we do not address his arguments here.

Because you have not raised any exception to required public disclosure, the requested information is presumed to be public and therefore must be released to the requestor.[1]

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); *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.

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[1]Although the requestor's attorney has submitted to this office a sample of what he characterizes as being representative of the requested records, this office does not address the public nature of those documents.

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,

V.G. Schimmel
Assistant Attorney General
Open Records Division

VGS/RWP/lmt

Ref: ID# 172243

Enc: Submitted documents

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