



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

January 10, 2003

Ms. Genevieve Stubbs  
Senior Associate General Counsel  
The Texas A&M University System  
John B. Connally Building, 6<sup>th</sup> Floor  
301 Tarrow  
College Station, Texas 77840-7896

OR2003-0213

Dear Ms. Stubbs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174842.

Texas A&M University - Kingsville (the "university") received a written request for the following information:

1. Any memo, letters, correspondence, e-mail, or other document to/from any official/administrator at [the university], the TAMU System Auditors, and Ms. Cherry Wolf and any official from Lark Seeds . . . between December 1, 2001 and October 15, 2002.
2. All documents related to any sponsored research signed by any official of [the university] and/or any faculty member at [the university] and any official of Lark Seeds between December 1, 2001 and October 15, 2002.

You contend that the requested information, a representative sample of which you submitted to this office, is excepted from required disclosure pursuant to sections 552.103, 552.107, and 552.116 of the Government Code.<sup>1</sup> This office also received comments from the requestor as to why the requested information should be released. See Gov't Code § 552.304.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

We note at the outset that you did not make a timely request for a decision from this office. Section 552.301(a) of the Government Code requires a governmental body to request a decision from the attorney general within ten business days after receiving a request for information that the governmental body wishes to withhold, unless there has been a previous determination that the requested information is excepted from required public disclosure. You state that the university received the records request on October 15, 2002. However, you did not request a decision from this office until October 30, 2002. When a governmental body fails to comply with the requirements of section 552.301, the information at issue is presumed public. Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). To overcome this presumption, the governmental body must show a compelling reason to withhold the information. Gov't Code § 552.302; *see also Hancock*, 797 S.W.2d at 381.

A compelling reason for withholding information is demonstrated where information is made confidential by other law or where third party interests are at issue. Open Records Decision No. 150 (1977). The exceptions to required public disclosure that you have raised, sections 552.103, 552.107(1), and 552.116, are discretionary exceptions, which are intended to protect only the interests of the governmental body, as distinct from exceptions that are intended to protect the interests of third parties or information deemed confidential by law. *See, e.g., Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.--Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive section 552.107(1)), 522 at 4 (1989) (discretionary exceptions in general). Consequently, the applicability of discretionary exceptions do not constitute "compelling reasons" for withholding information from the public. Accordingly, the university may not withhold any of the requested information pursuant to section 552.103, 552.107(1), or 552.116 of the Government Code.

We note, however, that some of the submitted records contain account numbers. Section 552.136 of the Government Code makes certain account numbers confidential and provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;

or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We therefore conclude that the university must withhold the account numbers in the submitted records pursuant to section 552.136 of the Government Code. We have marked in Exhibit H a representative sample of the information the university must withhold pursuant to section 552.136.

Finally, we note that the submitted records contain certain e-mail addresses that the university may be required to withhold from the public. Section 552.137 of the Government Code makes certain e-mail addresses confidential and 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.]

Some of the documents at issue contain private e-mail addresses. Accordingly, section 552.137 of the Government Code requires the university to withhold such e-mail addresses, a representative sample of which we have marked in Exhibits F and H, unless the university receives an affirmative consent to release from the person to whom the e-mail address belongs. Please note that section 552.137 does not apply to a university employee's governmental e-mail address, a business' general e-mail address, or a web page address.

In summary, account numbers such as those we have marked must be withheld under section 552.136. E-mail addresses of private individuals such as those we have marked must be withheld pursuant to section 552.137 if the university has not received an affirmative consent to release. The remaining submitted information must be released to the requestor.<sup>2</sup>

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>2</sup>Please note that the submitted documents also contain private information to which the requestor has a special right of access pursuant to section 552.023 of the Government Code. If the university receives another request for this information from a different individual, it should seek another decision from this office at that time.

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).

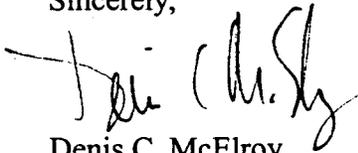
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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