



OFFICE of *the* ATTORNEY GENERAL
GREG ABBOTT

September 4, 2003

Ms. Carol Longoria
Public Information Coordinator
University of Texas System
201 West 7th Street
Austin, Texas 78701-2902

OR2003-6201

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# 187126.

The University of Texas Southwestern Medical Center (the "university") received a request for "access and copies of stale-dated, unclaimed, or uncashed checks (also known as outstanding checks), for the past five years, that show the names, last addresses and amounts due the payees . . . where the amount is over \$5,000." You claim that the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Section 552.104 of the Government Code states: "[i]nformation is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body

¹We 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 Nos. 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.

demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 at 2 (1991), 463 (1987), 453 at 3 (1986). A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of section 552.104. Open Records Decision Nos. 541 at 4 (1990), 520 at 4 (1989), 463 at 2 (1987).

You inform this office that the university is negotiating with Ernst & Young to provide unclaimed funds advisory services, and that no contract has yet been executed. However, you have not explained or otherwise demonstrated that the information you seek to withhold pertains to a current competitive bidding situation, or would give advantage to a competitor or bidder if released. *See* Open Records Decision Nos. 463, 331 (1982). We therefore conclude that you have not met your burden of establishing the applicability of section 552.104 to the information. Accordingly, we conclude that the university may not withhold any of the submitted information pursuant to section 552.104 of the Government Code.

You also claim that the requested information is made confidential by section 552.101 of the Government Code in conjunction with section 74.104 of the Property Code.² Title 6 of the Property Code pertains to unclaimed property. Several provisions of Title 6 govern the conditions under which different types of property are presumed to be abandoned by the owner of the property. *See, e.g.*, Prop. Code §§ 72.101 (personal property), 73.101 (property held by financial institution), 75.101 (mineral proceeds, and owner's underlying right to receive mineral proceeds). Under chapter 74 of the Property Code, a holder of property presumed abandoned under chapter 72, 73, or 75 of the Property Code, or under chapter 154 of the Finance Code, must file a report of the property with the Comptroller of Public Accounts (the "comptroller").³ *See* Prop. Code § 74.101. Under section 76.101 of the Property Code, a municipality holding property that is presumed abandoned and is subject to chapter 76 must file a report of the property with the treasurer of the municipality.⁴ *See* Prop Code § 76.101.

²Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

³Chapter 154 of the Finance Code governs contracts for prepaid funeral services. *See* Fin. Code § 154.301 (presumption of abandonment for money paid by purchaser of prepaid funeral benefits contract).

⁴Chapter 76 of the Property Code applies to property held by a school district, municipality, or county that is presumed abandoned under chapter 72 or chapter 75 and is valued at \$100 or less. Prop. Code § 76.001. Chapter 74 of the Property Code does not apply to property that is subject to chapter 76 of the Property Code. Prop. Code § 74.001.

The public availability of the property reports required under section 74.101 is governed by sections 74.104 and 76.104 of the Property Code.⁵ Section 74.104 provides:

- (a) Except as provided by Section 74.201, 74.203, or 74.307, a property report filed with the Comptroller under section 74.101 is confidential until the second anniversary of the date the report is filed.
- (b) The social security number of an owner that is provided to the comptroller is confidential.

With respect to the information you seek to withhold, you state that “[b]ecause the report submitted to the comptroller is expressly confidential . . . it is our position that this underlying information . . . should also be confidential and protected from release. This protection should apply even during the period prior to its inclusion on the annual Comptroller report because a check is not considered abandoned until the third anniversary of the date the check was payable[.]” Upon review of your comments and the submitted information, however, we find that the university has not adequately demonstrated, nor do the documents reflect, that section 74.104 applies to the information you have submitted for review. We therefore determine that the submitted information is not excepted from disclosure under section 552.101 of the Government Code in conjunction with section 74.104 of the Property Code.

The submitted records contain social security numbers, which may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the “Act”) imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the university should ensure that no such information was obtained or is maintained pursuant to any provision of law enacted on or after October 1, 1990.

In sum, social security numbers may be confidential under federal law. The remaining requested information must be released to the requestor.

⁵We note that section 76.104, which applies to property held by a school district, municipality, or county, is inapplicable here.

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 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 black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" being more prominent than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 187126

Enc. Submitted documents

c: Mr. Loren J. Bialik
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San Francisco, California 94131-1045
(w/o enclosures)