



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 12, 2004

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

OR2004-0220

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# 194026.

The University of Texas at Arlington (the "university") received a request for information regarding the requestor's application for employment with the university. You indicate that the university will release some information but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the information submitted under Tab 4 includes information that is non-responsive to the present request because the information consists of criminal history record information ("CHRI") of other parties who have names similar to the requestor. This decision does not address your claimed exception to disclosure of the non-responsive information, which the university is not required to release. We have marked this information accordingly.

We will now address your arguments with regards to the remaining information. You assert that the remaining information submitted under Tab 4 is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You first raise section 552.101 in conjunction with section 411.085 of the Government Code, which pertains to criminal history record information.

CHRI generated by the National Crime Information Center ("NCIC") or by the Texas Crime Information Center ("TCIC") is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. A portion of the information submitted under Tab 4, which we have marked, is CHRI generated by TCIC. Accordingly, this information must be withheld under section 552.101 in conjunction with chapter 411 of the Government Code.<sup>1</sup> The remaining information submitted under Tab 4 is not CHRI generated by TCIC or NCIC and, therefore, chapter 411 is inapplicable. As the university claims no other exceptions, the remaining information under Tab 4 must be released.<sup>2</sup>

You assert that the information submitted under Tab 5 is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In this instance, we find that the information submitted under Tab 5 relates to a purely administrative personnel matter rather than to a policy issue.

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<sup>1</sup> While the university must withhold the CHRI relating to the requestor, the DPS has the authority to release an individual's own CHRI to that individual. *See* Gov't Code § 411.083(b)(3).

<sup>2</sup>We note, however, that the submitted documents contain information that is confidential with respect to the general public. *See* Gov't Code § 552.023 (person has special right of access to information that is excepted from public disclosure under laws intended to protect person's privacy interest as subject of the information); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when person asks governmental body for information concerning the person himself or herself). Thus, in the event the university receives another request for this information from someone other than this requestor or his authorized representative, the university must ask this office for a decision whether the information is subject to public disclosure.

Therefore, section 552.111 is inapplicable. As the university claims no other exceptions, the information submitted under Tab 5 must be released.

In summary, the marked information submitted under Tab 4 must be withheld pursuant to section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and federal regulations. The remaining 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 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,



Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 194026

Enc. Submitted documents

c: Mr. David Moore  
5406 Oak Springs Drive  
Arlington, Texas 76016  
(w/o enclosures)