



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 11, 2004

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

OR2004-3848

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# 201216.

The University of Texas at Austin (the "university") received a request for copies of all e-mail records of a recently terminated named employee. You state that the requestor verbally narrowed the scope of the request to cover only e-mails of a "personal nature and non-business related." You assert that the requested information is not "public information" for purposes of the Public Information Act (the "Act"). Alternatively you contend that if such information is subject to the Act, it is excepted from disclosure under sections 552.101, 552.117, and 552.137 of the Government Code. You state that you have notified the individual who is the subject of this request of her right to submit comments to this office explaining why information related to her should not be released. *See Gov't Code § 552.304* (allowing interested party to submit comments indicating why requested information should or should not be released). As of the date of this letter, the individual notified by the university has not submitted any arguments as to why the information pertaining to her should not be disclosed. We have considered your arguments and reviewed the submitted sample information.<sup>1</sup>

Initially, we address your contention that the requested information is not subject to the Act. You contend that personal e-mail exchanges are not "public information" and therefore are not subject to public disclosure under the Act. *See Gov't Code § 552.021* (indicating that

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<sup>1</sup> We assume that the 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.

Act is only applicable to "public information"). Section 552.002 defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body, and the governmental body owns the information or has a right of access to it." Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if it is maintained for a governmental body, the governmental body owns or has a right of access to the information, and the information pertains to the transaction of official business. *See* Open Records Decision No. 462 (1987).

You state that university policy allows "incidental use of electronic mail by employees." You assert that information so created is "unrelated to official state business because [it is] of a purely personal nature[.]" You argue that, under these circumstances, the personal e-mails "were not collected, assembled, or maintained in connection with the transaction of any business of the [u]niversity, nor were they collected, assembled, or maintained pursuant to any law or ordinance." Based on your comments and our review of the submitted sample of such information, we agree that portions of the submitted communications do not relate to the transaction of official department business and therefore do not constitute "public information" of the university. Consequently, the university is not required to disclose the personal e-mail communications, found in Tabs 4 and 5, under the Act. *Cf.* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving de minimis use of state resources). We find, however, that the information located in Tab 6 is related to official state business and is thus subject to the Act.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This provision encompasses the common-law right to privacy which protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* includes information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *U. S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations,

and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review, we find that a portion of the information in Tab 6 is protected by common-law privacy. We have marked the information that must be withheld under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, pursuant to section 552.117(a)(1), the university must withhold the section 552.117 information of a former employee who elected under section 552.024, prior to the university's receipt of this request, to keep that information confidential. The university may not withhold such information under section 552.117(a)(1) for a former employee who did not make a timely election. We have marked the information that the university may be required to withhold under section 552.117(a)(1).

Finally, you contend that a portion of the submitted information in Tab 6 is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides:

(a) Except as otherwise provided by this section, 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.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a

governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. We note that section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Thus, the university may not withhold any of the submitted e-mail addresses in Tab 6.

In summary, the personal e-mails located in Tabs 4 and 5 that do not relate to university business do not constitute public information and are therefore not subject to disclosure under the Act. The university must withhold the information we have marked in Tab 6 pursuant to section 552.101 in conjunction with common-law privacy. We have marked the information in Tab 6 that must be withheld under section 552.117 if the former employee timely elected under section 552.024 to keep that information confidential. The remaining information in Tab 6 must be released to the requestor.

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

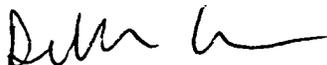
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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,



Debbie K. Lee  
Assistant Attorney General  
Open Records Division

DKL/seg

Ref: ID# 201216

Enc. Submitted documents

c: Ms. Marietta Robards  
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(w/o enclosures)