



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 20, 2005

Ms. Carol Longoria
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2005-04399

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 224502.

The University of Texas Medical Branch at Galveston (the "university") received a request for all university communications and documents related to the requestor, and the personnel files of three named individuals. You state that you have released a portion of the requested information to the requestor. You also state that one of the named individuals is not a current or former university employee, and therefore you have no responsive information regarding this individual. We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You argue that the submitted information is not subject to the Act. In the alternative, you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have received correspondence from both interested third parties, as well as the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered all submitted arguments and reviewed the submitted information.

The university argues that the submitted e-mails are not public information subject to the Act. See Gov't Code § 552.021 (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." The university contends that the

submitted e-mails were not collected, assembled, or maintained in connection with the transaction of any official business of the university, nor were they collected, assembled, or maintained pursuant to any law or ordinance. You assert that the submitted documents are simply an incidental use of e-mail by a university employee with regard to a personal matter. Based on your arguments and our review of the documents at issue, we agree that the submitted e-mails do not constitute “public information” that is subject to the Act. Consequently, the university is not required to disclose the submitted e-mails 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).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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

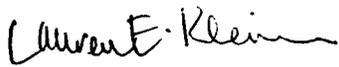
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

¹ As our ruling on this issue is dispositive, we need not address any of the remaining arguments.

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,



Lauren E. Klein
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 224502

Enc. Submitted documents

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