



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2005

Ms. Cherry Kay Wolf
Associate General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2005-09942

Dear Ms. Wolf:

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# 235655.

The Texas A&M International University (the "university") received a request for information regarding the university's maintenance of the employment records of the requestor, a former university employee, as well information regarding three named individual's involvement in the direction of the budget for a specified university program. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that you have not submitted any information responsive to the portion of the request regarding the budget for the specified university program. To the extent any information responsive to that portion of the request existed on the date the university received this request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Furthermore, we note that a governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for these records, we consider the university to have made a good faith effort to identify information that is responsive to the remainder of the request, and we will address the applicability of your claimed exception to this information.

We note that the submitted information is made expressly public under section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). The submitted information consists entirely of university records retention schedules that are posted on the university's system website that is accessible to the public.¹ Therefore, we conclude that this information is expressly public under section 552.022(a)(15) and, thus, the university may only withhold this information if it is confidential under other law.

Section 552.103 of the Government Code is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). As such, section 552.103 does not qualify as other law that makes information confidential for the purposes of section 552.022. Accordingly, the university may not withhold the submitted information under section 552.103 of the Government Code. As you raise no other exceptions to disclosure, we find that the submitted information 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).

¹See The Texas A&M University System Records Retention Schedule (visited Nov. 3, 2005) <<http://sago.tamu.edu/policy/2004schedule.htm>>.

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); *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 Office of the Attorney General 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. 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,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krl

Ref: ID# 235655

Enc. Submitted documents

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(w/o enclosures)