



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 10, 2006

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

OR2006-03550

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# 246031.

The Texas A&M International University (the "university") received four requests from the same requestor for information pertaining to the university, including student information, information pertaining to recruitment efforts by a university employee, and contractual terms and salary information for named individuals.¹ You state that you have no information responsive to a portion of the requests. 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). You also state that you will provide the requestor with a portion of the requested information. You claim that the remaining information is excepted from disclosure under sections 552.101, 552.103, 552.114, and 552.147 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.²

Initially, you note that some of the information responsive to this request is the identical information that was the subject of a previous ruling from this office. In Open Records

¹As you have not submitted copies of the requests, we take our description from your briefs.

²This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. See Gov't Code §§552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Letter No. 2006-02306 (2006), we reviewed nine requests that the university received for numerous categories of information regarding the requestor, certain university employees, and the expenditure of public funds. You indicate that some of the information responsive to the present request will be withheld or released in accordance with our previous ruling. Assuming the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that you must continue to rely on our decision in Open Records Letter No. 2006-02306 with respect to the information requested in this instance that was previously ruled upon in that decision.³ See Gov't Code § 552.301(f); Open Records Decision No. 673. To the extent that the information requested in this instance was not the subject of that prior ruling, we will now address that information.

Next, we address the university's obligations under section 552.301 of the Government Code. This section prescribes procedures that must be followed in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. See Gov't Code § 552.301(e)(1)(A)-(D). In this instance, you have not submitted copies of the requests for information to this office. Thus the university failed to comply with the procedural requirements mandated by section 552.301.

Section 552.302 provides that if a governmental body does not request an attorney general decision as prescribed by section 552.301, then the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App. – Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by a demonstration that the information is confidential by law or that third-party interests are at stake. See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

Although you raise section 552.103 of the Government Code, this section is a discretionary exception that protects a governmental body's interests and may be waived. See Gov't Code

³The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673.

§ 552.007; *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); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 542 at 4 (1990) (statutory predecessor to section 552.103 subject to waiver. Accordingly, the university may not withhold any of the information at issue under section 552.103 of the Government Code. However, because sections 552.101, 552.114, and 552.147 of the Government Code can provide compelling reasons for non-disclosure, we will address your arguments under these exceptions.

We note that the submitted information contains an agenda and minutes from a closed session of the university. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that “[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3).” Gov’t Code § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). In addition, minutes of a closed meeting are confidential. *See* Open Records Decision No. 60 (1974) (closed meeting minutes are confidential under predecessor to section 551.104); *see also* Open Records Decision Nos. 563 (1990) (minutes of properly held executive session are confidential under OMA); 495 (1988) (information protected under predecessor to section 551.104 cannot be released to member of the public in response to open records request). Therefore, the university must withhold the requested agenda and minutes of the university’s closed session.

Section 552.101 also encompasses the Family Educational Rights and Privacy Act of 1974 (“FERPA”), which provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). “Education records” means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Gov’t Code § 552.114. Section 552.026 of the Government Code provides that “information contained in education records of an educational agency or institution” may only be released under the Act in accordance with FERPA. Gov’t Code § 552.026. Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978).

Such information includes both information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). Upon review of the submitted documents, we have marked student-identifying information that must be withheld pursuant to FERPA.

The remaining submitted information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Gov't Code § 552.147. Therefore, the university must withhold the social security numbers contained in the remaining submitted information under section 552.147.⁴

In summary, to the extent that the documents at issue here are precisely the same records that we addressed in Open Records Letter No. 2006-02306, we conclude that the university must continue to rely on that letter ruling as a previous determination. The university must withhold the agenda and meeting minutes from the university's closed session under section information pursuant to FERPA, and the social security numbers pursuant to section 552.147 of the Government Code. The university must release the remaining submitted information 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, upon receiving this ruling, the governmental body

⁴We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

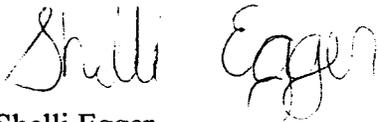
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to 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,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/er

Ref: ID# 246031

Enc. Submitted documents

c: Mr. Richard Tansey
c/o Murray Malakoff
5219 Mcpherson, Suite 325
Laredo, Texas 78041
(w/o enclosures)