



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2006

Ms. Valerie Coleman-Ferguson
Senior Assistant General Counsel
University of Houston
311 E Cullen Building
Houston, Texas 77204-2028

OR2006-05530

Dear Ms. Coleman-Ferguson:

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# 250171.

The University of Houston (the "university") received a request for information pertaining to the applicants, application materials, and committee members for the "visiting scholar" and "fellow" position(s) in the African American studies department for the 2005-06 school year. You state that you have provided the requestor with a portion of the requested information. Further, you inform us that you have withheld identifying student information in accordance with the federal Family Education Rights and Privacy Act ("FERPA"). See Open Records Decision No. 634 (1995) (educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions). You claim that the remaining requested information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code. You further state that the requested information may contain proprietary information subject to exception, but make no arguments and take no position as to whether the information is excepted from disclosure. Pursuant to section 552.305, you state, and provide documentation showing, that you notified the interested third party Fred L. McGhee

and Associates, Incorporated (“McGhee”) of the request and of its right to submit arguments to this office as to why the information should not be released. *See* Gov’t Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under the Act in certain circumstances). We have considered your arguments and reviewed the submitted representative sample of information.¹

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, personal cellular telephone 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. Gov’t Code § 552.117(a)(1). Pursuant to section 552.117(a)(1), the university must withhold personal information that pertains to a current or former employee of the university who elected, prior to the university’s receipt of the request for information, to keep such information confidential. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). You state that the employee whose information is at issue elected to keep his personal information confidential prior to the date on which the university received this request. Accordingly, the information you have marked, along with the information that we have marked, must be withheld pursuant to section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code 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 We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1983), 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.

(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. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address, or the general e-mail address of a business. The e-mail addresses in the submitted information are not within the scope of section 552.137(c). Because you state that the university has received affirmative consent to disclose the e-mail addresses, the university must withhold the e-mail addresses you have marked, as well as the e-mail addresses we have marked, in Exhibit 3 under section 552.137 of the Government Code.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, McGhee has not submitted any comments to this office explaining how release of the requested information would affect its proprietary interests. Therefore, McGhee has provided us with no basis to conclude that it has a protected proprietary interest in any of the submitted information and none of it may be withheld on that basis. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision

Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

In summary, the university must withhold the information marked pursuant to sections 552.117(a)(1) and 552.137 of the Government Code. The remaining 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, 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,



Margaret Cecere
Assistant Attorney General
Open Records Division

MC/eb

Ref: ID# 250171

Enc. Submitted documents

c: Mr. Timothy J. O'Brien
1303 Ruthven Street
Houston, Texas 77019-5139
(w/o enclosures)

Dr. Fred L. McGhee
1240 Barton Hills Drive #207
Austin, Texas 78704
(w/o enclosures)