



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2007

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

OR2007-02448

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# 272941.

Texas A&M International University (the "university") received a request for information regarding a specific custodial services contract award.¹ You state that some of the responsive information will be released to the requestor. We note that you have redacted social security numbers pursuant to section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you inform us that a portion of the requested information is subject to a previous ruling issued by this office. On February 7, 2007, this office issued Open Records Letter

¹You inform us that in an e-mail dated December 15, 2006, the requestor withdrew his request for any and all documents relating to a named individual's employment with the university.

²Section 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.

No. 2007-01579 (2007), in which we ruled that a portion of the requested information was excepted from public disclosure under sections 552.110(b) and 552.147 of the Government Code. You state that the pertinent facts and circumstances have not changed since the issuance of that prior ruling. Thus, we determine that the university may continue to rely on our ruling in Open Records Letter No. 2007-01579 as a previous determination and withhold the information at issue under sections 552.110(b) and 552.147 in accordance with that decision. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 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); 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; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

Next, we address your claim under section 552.117 of the Government Code for the information not subject to the previous determination. Section 552.117(a)(1) excepts 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 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the information at issue pertains to a former university employee who timely elected to keep his personal information confidential. Based on your arguments and our review, we agree that section 552.117(a)(1) is applicable. Accordingly, the university must withhold the information we have marked pursuant to section 552.117 of the Government Code.

We note that the submitted information contains private e-mail addresses.³ Section 552.137 excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). 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. The e-mail addresses we have marked are not of a type specifically

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

excluded by section 552.137(c) of the Government Code. Therefore, the university must withhold the marked e-mail addresses in accordance with section 552.137 unless the university receives consent for their release.

In summary, the university may continue to rely on our ruling in Open Records Letter No. 2007-01579 as a previous determination and withhold a portion of the requested information under sections 552.110 and 552.147 of the Government Code in accordance with that decision. The university must withhold the information we have marked pursuant to sections 552.117 and 552.137 of the Government Code. As you raise no further exceptions to disclosure, 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,



Holly R. Davis
Assistant Attorney General
Open Records Division

HRD/krl

Ref: ID# 272941

Enc. Submitted documents

c: Mr. Jaime Mendoza
Mendoza Maintenance Group, Inc.
5303 Springfield Ave.
Laredo, Texas 78041
(w/o enclosures)