



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2008

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

OR2008-06086

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# 309173.

The University of Texas at San Antonio (the "university") received a request for seven categories of information relating to the Liu's Family Foundation U.S. – China Business Education Initiative (the "foundation") at the university's College of Business. The requestor subsequently narrowed his request to exclude any signatures where there is other information that identifies the signer of the particular document. You state you have released information responsive to six categories of the request. You claim that the submitted information, responsive to the request for documents regarding donations to the foundation, is excepted from disclosure under sections 552.101, 552.1235, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

Section 552.1235 excepts from disclosure "the name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant,

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<sup>1</sup>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 (1988), 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.

or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). We note that this section does not except from disclosure the amount or value of an individual gift, grant, or donation. *See id.* § 552.1235(b). “Institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section. *See* Educ. Code § 61.003.

You have marked information at Tab 5 that the foundation seeks to withhold under section 552.1235. We understand you to contend that the marked information either identifies or tends to identify donors to the foundation. You state that these donors have not granted the university permission to reveal their identity. Based upon your representations and our review, we agree that some of the information you have marked identifies persons as actual donors to the foundation. Accordingly, we conclude that the university must withhold the information we have marked under section 552.1235. However, you have failed to establish that the remaining marked information identifies or tends to identify the donors to the foundation. Therefore, you may not withhold any of the remaining information on that basis.

We next address your assertion that the account number for deposit and DTN number are excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. The account number for deposit appears to be an actual bank account number. As such, it is an access device number used to obtain money. Thus the account number for deposit is confidential under section 552.136 of the Government Code and must be withheld. On the other hand, you do not explain, nor can we discern, what a DTN number

is or how it can be used to access "money, goods, services, or any thing of value." *Id.* Thus, we conclude you have failed to demonstrate that the DTN number is an access device number for the purposes of section 552.136. Therefore, the university may not withhold the DTN number under section 552.136.

As we discussed above, the requestor excluded any signatures to the extent that the particular document otherwise identifies the signer of the document. However, in this instance we note that there are no printed signature blocks underneath the signatures in the submitted information. Therefore, we address your contention that the submitted signatures, which you have marked in Tab 5, are excepted from disclosure under section 552.101 based on the "special circumstances" aspect of common-law privacy. 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 the common-law right of privacy. Ordinarily, information is protected by common-law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). However, information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). In Open Records Decision No. 169, we considered the personal safety concerns of public employees and recognized that there may be specific instances where "special circumstances" exist to except from public disclosure some of the employees' addresses. *See* Open Records Decision No. 123 (1976). In that decision, the employees demonstrated that their lives would be placed in danger if their addresses were released to the public. ORD 169 at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* at 6.

You assert that the marked signatures should be excepted because the requestor has shown a pattern of using the legal system as a vehicle to harass university employees and students both personally and professionally. However, the requestor's alleged abuse of the legal system does not constitute a threat against the life or safety of the university administrators whose signatures are at issue. Additionally, you have not provided any demonstration that the requestor has otherwise made any credible threats against the life or safety of any of the administrators. Upon review, we determine that you have not established that release of the marked signatures would cause any of the individuals to face an imminent threat of physical harm. Accordingly, you have not shown special circumstances sufficient to justify withholding the marked signatures from public disclosure on that basis.

In the alternative, you argue that the marked signatures should be withheld under constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, the information you seek to withhold are the signatures of university employees who have signed the submitted donor forms as part of their job duties for the university. As such, this information does not fall within the zones of privacy, nor does it implicate the named employees' privacy interests for the purposes of constitutional privacy. Accordingly, the university may not withhold any of the marked signatures under constitutional privacy. Therefore, the marked signatures must be released.

In summary, the university must withhold 1) the information we have marked under section 552.1235 of the Government Code, and 2) the account number for deposit that you have marked under section 552.136 of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/jb

Ref: ID# 309173

Enc. Submitted documents

c: Mr. Tom C. Retzlaff  
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(w/o enclosures)