



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 9, 2008

Ms. Carol Longoria
University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2008-09320

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# 315248.

The University of Texas at Austin ("UT-Austin")¹ and the University of Texas at El Paso ("UTEP") received requests from the same requestor for any communications involving a named UT-Austin employee, a named UTEP employee, and four other named individuals since January 1, 2006. You claim that the submitted information is not subject to the Act. Alternatively, you claim that portions of the submitted documents are subject to section 552.137 of the Government Code. We have considered your arguments and reviewed the submitted information, some of which consists of a representative sample.²

The Act is applicable to "public information." Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" means "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, virtually

¹We note that although one request was addressed to the University of Texas at San Antonio, it was actually mailed to and received by the University of Texas at Austin.

²We 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.

all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). However, information is not subject to the Act if it is maintained by government employees in their personal capacities and not in connection with official government business. *See* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources).

In this instance, you state that the responsive documents are not maintained by UT-Austin and UTEP in connection with official business. Instead, you inform this office that these documents are maintained solely by the named UT-Austin and UTEP professors in their personal capacities. You explain that these professors participated in an advisory panel conducted by the University of Texas at San Antonio ("UTSA"). You state that this panel evaluated UTSA's Department of Earth and Environmental Science program, and that all panel members participated voluntarily on behalf of UTSA. You state further that, "UTSA sought their advice and opinions based solely on their professional expertise, not because they are faculty members of other UT System campuses," and you explain that faculty members are expected to participate professionally outside UT-Austin and UTEP "with the understanding that they will make clear that they speak for themselves and do not speak for [UT-Austin and UTEP]." Based on your representations, we find that the responsive documents are not maintained by UT-Austin or UTEP in connection with the transaction of official UT-Austin or UTEP business. Further, you represent that UT-Austin and UTEP do not own or have any right of access to the requested information. Rather, you state that the responsive documents are maintained by the named professors in their personal capacities and not as UT-Austin and UTEP employees. Accordingly, we find that the responsive documents, in the hands of the named UT-Austin and UTEP professors, are not subject to the Act and need not be released in response to this request.³ However, we note that, because this panel was commissioned by UTSA for the purpose of evaluating one of that university's programs, the requested information would be maintained in connection with the transaction of official UTSA business. Therefore, we note that these documents would be public information subject to the Act in the hands of UTSA.

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

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

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). If the governmental body does not file suit over 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,



Reg Hargrove
Assistant Attorney General
Open Records Division

RJH/eeg

Ref: ID# 315248

Enc. Submitted documents

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(w/o enclosures)