ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 8, 2009

Ms. Neera Chatterjee
Public Information Coordinator
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2009-06192

Dear Ms. Chatterjee:

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# 342393.

The University of Texas at El Paso (the "university") received a request for four categories of information. You state that the information pertaining to category 2 and portions of the information pertaining to categories 1 and 3 is being released to the requestor. You also state that the university does not maintain any information responsive to category 4.[1] You claim that the submitted information is excepted from disclosure under section 552.1235 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[2] We have also received and considered comments

[1]We note that the Act does not require a governmental body to release information that did not exist when it received a request or create responsive information. *See Econ. Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d 266* (Tex. Civ. App.–San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

[2]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.

submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you assert that the University of Texas Electronic Identification Numbers ("UTEID") at issue are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You indicate the UTEIDs are used solely to access the university's computer mainframe and have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we determine the UTEIDs in the submitted information do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released to the requestor.

Next, we note and you acknowledge that the university failed to comply with section 552.301 in requesting this decision. *See* Gov't Code § 552.301(b), (e). A governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.–Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Sections 552.1235 and 552.137 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections require the university to withhold the submitted information.

You assert that a portion of the submitted information is excepted from disclosure under section 552.1235 of the Government Code, which excepts "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, or donation of money or property to an institution of higher education[.]" Gov't Code § 552.1235(a). However, 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 of the Education Code 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. We agree that the university qualifies as an "institution of higher education" under section 61.003 of the Education Code. Further, because section 552.1235 of the Government Code does not provide a definition of "person," we look to the definition provided in the

Code Construction Act. *See id.* § 311.005. "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

The university asserts that the submitted information contains the identifying information of university donors which are confidential pursuant to section 552.1235. Based on this representation and our review of the submitted information, we agree that a portion of the information identifies university donors. The university may withhold this information, which we have marked, under section 552.1235. However, we note that one of the names you have marked under this section is readily available on the university's website. Therefore, we find that the university may not withhold the name of this donor under section 552.1235. We note that the remaining information you have marked only appears to identify prospective university donors. The university has failed to establish that this information would identify a donor who made a gift, grant, or donation of money or property to the university for purposes of section 552.1235 of the Government Code. Therefore, we conclude the university failed to demonstrate that section 552.1235 is applicable to the remaining information and it may not be withheld on this basis.

We note that the remaining information contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code, which requires a governmental body to withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See* Gov't Code § 552.137(b). You do not inform us that the owners of the e-mail addresses have affirmatively consented to release. Therefore, the university must withhold the e-mail addresses we have marked under section 552.137. As the university does not raise any other exceptions to disclosure, the remaining information must be released to the requestor.

In summary, UTEID numbers you have marked are to subject to the Act. The university must withhold the donor information we have marked under section 552.1235. The university must also withhold the e-mail addresses we have marked under section 552.137. The remaining submitted information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free,

at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

Bob Davis
Assistant Attorney General
Open Records Division

RSD/cc

Ref: ID# 342393

Enc. Submitted documents

cc: Requestor
(w/o enclosures)