



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 27, 2009

Mr. Scott A. Kelly  
Deputy General Counsel  
The Texas A & M University System  
Office of General Counsel  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424

OR2009-15213

Dear Mr. Kelly:

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# 359527.

The Texas A & M University (the "university") received a request for eight categories of information regarding the requestor's employment with the university, including the requestor's personnel file, records of an investigation of which the requestor was the subject, salary and raise information for specified university employees, and e-mail communications to and from specified individuals.<sup>1</sup> You indicate you will release portions of the responsive information. You state you will withhold portions of the responsive information under section 552.117 of the Government Code.<sup>2</sup> You state you are withholding portions of the

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<sup>1</sup>You inform us the university received the present request on July 1, 2009. You explain in accordance with section 552.263 of the Government Code, the university required the requestor to provide a deposit or bond for payment of anticipated costs for the preparation of the requested information. See Gov't Code § 552.263(a). You state the university received payment on August 6, 2009; thus, that is the date on which the university is deemed to have received the present request. *Id.* § 552.263(e).

<sup>2</sup>We note a governmental body may withhold the social security number, home address and telephone number, and family member information of its employees without requesting a ruling from this office, providing the individual to whom the information pertains timely elected to keep the information confidential. Gov't Code §§ 552.024(c-1), 552.117(a)(1).

requested information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>3</sup> You claim portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>4</sup>

Section 552.137 of the Government Code states "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 [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We note you have marked an internet address. This address, which we have marked for release, is not subject to section 552.137 of the Government Code and may not be withheld on that basis. However, the remaining information you have marked consists of e-mail addresses. You state the individuals at issue have not consented to disclosure of their e-mail addresses. Accordingly, the university must withhold the e-mail addresses you have marked under section 552.137, unless subsection (c) applies.

Finally, you note some of the remaining information at issue is protected by copyright. A governmental body must allow inspection of copyrighted materials unless an exception applies to the information, but a custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). Thus, if a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

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<sup>3</sup> The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

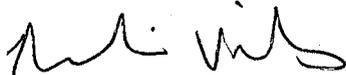
<sup>4</sup>We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

In summary, except where we have marked for release, university must withhold the e-mail addresses it has marked under section 552.137 of the Government Code, unless subsection (c) applies. The remaining information must be released, but any information protected by copyright must be released in accordance with copyright law.

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](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, toll free, at (888) 672-6787.

Sincerely,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/cc

Ref: ID# 359527

Enc. Submitted documents

c: Requestor  
(w/o enclosures)