



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 17, 2011

Ms. Ruth E. Shapiro
Assistant General Counsel
University of Houston
East Cullen Building, Suite 311
Houston, Texas 77204

OR2011-06933

Dear Ms. Shapiro:

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# 417740.

The University of Houston (the "university") received a request for any documents pertaining to specified contributions. You claim the submitted information is excepted from disclosure under sections 552.101, 552.111, 552.1235, 552.117, 552.136, and 552.137 of the Government Code. You also state release of portions of the submitted information may implicate the proprietary interests of Pearson Education ("Pearson"). Thus, pursuant to section 552.305 of the Government Code, you state you notified Pearson of the request and of the company's right to submit arguments to this office as to why its information should not be released. Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the university has redacted portions of the submitted information. Some of this redacted information is unrelated to the specified contributions. We agree such information is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released. However, the university also redacted responsive internal "endowment account" numbers from the submitted information. Open Records Decision No. 684 (2009) permits redaction of ten categories of information, including bank account and bank routing numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. However, you do not assert, and the records do not indicate, that the

university has been authorized to withhold the redacted internal "endowment account" numbers without seeking a ruling from this office. *See* Gov't Code § 552.301(2); Open Records Decision 673 (2000). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, the university must not redact requested information that it submits to this office in seeking an open records ruling, unless the information is the subject of a previous determination under section 552.301 of the Government Code. *See* Gov't Code §§ 552.301(e)(1)(D), .302. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

Next, we note some of the responsive information is subject to section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body." *Id.* § 552.022(a)(3). The submitted information contains documents taken from accounts as well as vouchers that are related to the receipt of funds by the university that are subject to section 552.022(a)(3). Although you assert this information is excepted from disclosure under section 552.111 of the Government Code, this section is a discretionary exception within the Act and not "other law" that makes information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to section 552.111 deliberative process subject to waiver). Therefore, the responsive information in accounts and vouchers may not be withheld under section 552.111. You also claim portions of the submitted information are excepted under sections 552.101, 552.1235, 552.117, 552.136, and 552.137, which constitute "other law" for purposes of section 552.022. Accordingly, we consider the applicability of these exceptions with respect to all the submitted information. We also consider the interests of the notified third party for all the submitted information, as third party interests can provide a compelling reason to withhold information. First, however, we address your claim under section 552.111 for the information not subject to section 552.022.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." Gov't Code § 552.111. This exception encompasses the deliberative process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of

advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. See Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); see ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. See Open Records Decision No. 313 at 3 (1982).

The responsive information consists of records documenting the university's receipt of the specified contributions. You state these records should be protected by the deliberative process privilege because they "are used to determine development policies used by the [u]niversity to generate gifts and produce reports for use in determining how best to implement its advancement/development programs [u]niversity-wide, while protecting donor privacy and confidentiality." However, you do not explain how any of the responsive records themselves consist of or document the advice, opinion, or recommendation of university employees or representatives regarding such policies. Thus, we conclude you failed to demonstrate the elements of the deliberative process privilege with respect to the submitted information, and no information may be withheld under section 552.111 of the Government Code.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Pearson explaining why any portion of its submitted information should not be released. Therefore, we have no basis to conclude Pearson has a protected proprietary interest in the submitted information. See *id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, third party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Consequently, the university may not withhold any of the submitted information on the basis of any proprietary interest Pearson may have in the information.

The university also raises section 552.1235 of the Government Code, which 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, or donation of money or property to an institution of higher education[.]" Gov't Code § 552.1235(a). For purposes of this exception, "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 meaning "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." Educ. Code § 61.003(8). Because section 552.1235 does not provide a definition of "person," we look to the definition provided in the Code Construction Act. *See* Gov't Code § 311.005. "Person" includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

You have marked information the university seeks to withhold under section 552.1235. You state this marked information identifies donors to the university. You do not indicate any donors have granted the university permission to reveal their identities. Based on your representation and our review, we agree that the information we marked identifies persons as actual donors to the university. Accordingly, the university must withhold the identities of donors we marked under section 552.1235 of the Government Code. However, the remaining information you marked includes information identifying Pearson, whose identity you have already released as a corporate donor to the university. Accordingly, we find Pearson has previously granted the university permission to reveal its identity. Additionally, you do not explain how the remaining information you marked, which identifies deceased individuals or consists of various internal identification numbers, would permit this requestor to identify any university donor. Thus, we conclude no remaining information may be withheld on the basis of section 552.1235.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. You seek to withhold information revealing the financial sources of the donations on the basis of common-law privacy. This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 at 9-10 (1992), 523 at 3-4 (1989). However, the information you seek to withhold pertains directly to contributions made to the university, each of which is a financial transaction with the university. This office has determined there is a legitimate public interest in the essential facts about a financial transaction between an individual and a

governmental body. *See* Open Records Decision No. 600 (1992) (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure). Thus, financial information related to such transactions is generally not excepted from disclosure on the basis of common-law privacy. Therefore, we find there is a legitimate public interest in the financial sources of the contributions at issue. Consequently, such information may not be withheld under section 552.101 in conjunction with common-law privacy.

You assert that some of the remaining information is excepted from disclosure under section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(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(a)-(b). The university must withhold the bank account and routing numbers we marked under section 552.136 of the Government Code.¹ You also marked numbers you state can be used within the university to access donor, endowment, and other account information. However, you do not explain how a member of the public could use such numbers to obtain anything of value or initiate a transfer of funds. Accordingly, we conclude you failed to demonstrate the applicability of section 552.136 to any of the remaining information and none of the remaining information may be withheld on that basis.

Section 552.117(a)(1) of the Government Code 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 id.* §§ 552.117(a)(1), .024. Section 552.117(a)(2) excepts from disclosure the home address,

¹As noted above, Open Records Decision No. 684 is a previous determination authorizing a governmental body to withhold ten categories of information without the necessity of requesting an attorney general decision, including bank account and routing numbers under section 552.136 of the Government Code.

home telephone number, and social security number of a peace officer, as well as information that reveals whether a peace officer has family members, regardless of whether the officer complies with sections 552.024 or 552.1175 of the Government Code. *See id.* § 552.117(a)(2). Although you generally raise section 552.117 for the submitted information, we find it does not contain information subject to section 552.117. Thus, section 552.117 of the Government Code is not applicable to the submitted information.

Section 552.137 of the Government Code 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). *See id.* § 552.137(a)-(c). We note this exception 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. The remaining information does not contain any e-mail addresses subject to section 552.137. Accordingly, none of the remaining information may be withheld on that basis.

In summary, the university must withhold the information we marked under sections 552.1235 and 552.136 of the Government Code. The remaining responsive 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, toll free, at (888) 672-6787.

Sincerely,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/eeg

Ref: ID# 417740

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Pearson Education
One Lake Street
Upper saddle River, New Jersey 07458
(w/o enclosures)