



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2012

Ms. Glenda Robinson Helfrich
Senior Associate General Counsel
Texas Tech University System
3601 4th Street, Stop 6246
Lubbock, Texas 79430-6246

OR2012-06091

Dear Ms. Helfrich:

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# 451943.

The Texas Tech University Health Sciences Center (the "university") received a request for five categories of information related to the requestor's termination, including a copy of all the files on his hard drive. You state the university has released some of the information. You claim the remaining requested information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the university's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the

¹Although you also assert Rule 503 of the Texas Rules of Evidence, we note the proper exception to raise for the attorney-client privilege in this case is section 552.107 of the Government Code.

²We 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 those submitted to this office.

attorney general's decision and state the exceptions that apply within ten business days after receiving a request for information it wishes to withhold. *See* Gov't Code § 552.301(b). You state the university received the request for information on February 1, 2012. You state the requestor agreed to grant the university an extension until February 17, 2012, to process his request. However, we note the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1–2 (1988). You did not seek a ruling from this office until February 21, 2012. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, we find the university failed to comply with the procedural requirements of section 552.301 of the Government Code in asking this office for a ruling.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the 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 id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (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. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you claim sections 552.107 and 552.108 of the Government Code, we note these are discretionary exceptions designed to protect a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 11–12 (2002) (attorney-client privilege under section 552.107 subject to waiver), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, we find the university may not withhold any of the submitted information under either section 552.107 or 552.108 of the Government Code. However, we note some of the requested information might be subject to section 552.117 of the Government Code.³ As this exception provides a compelling reason for non-disclosure, we will consider its applicability to the submitted information.

Section 552.117(a)(2) excepts from disclosure the home address, home telephone number, emergency contact information, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of

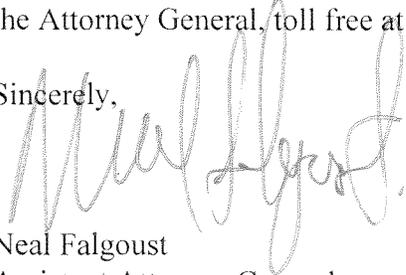
³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). We have marked a cellular telephone number that relates to a university police officer. If this cellular service was paid from the officer's personal funds, the university must withhold the cellular telephone number we have marked under section 552.117(a)(2) of the Government Code. If this cellular service was not paid for from the officer's personal funds, the university may not withhold it under section 552.117(a)(2) of the Government Code. As the university raises no other exceptions, the remaining 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 451943

Enc. Submitted documents

c: Requestor
(w/o enclosures)