



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 4, 2014

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

OR2014-03703

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# 515569 (UT OGC# 153572).

The University of Texas at Austin (the "university") received a request for all written and electronic documents sent or received by two specified individuals concerning two other specified individuals for a specified time, as well as calendars of meetings for two individuals during a specified period of time. You state you will release much of the responsive information. You state the university will redact information subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code from information released to the requestor.¹ Further, you state the university will redact access device information under section 552.136 of the Government Code from information released to the requestor.² You state the university redacted information

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

²Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d),(e).

pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.³ You claim the remaining requested information is excepted from disclosure under sections 552.102 and 552.1235 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.⁴

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). You state the responsive information contains the dates of birth of university employees. Based on your representation, we agree the information you have marked is excepted under section 552.102(a), and must be withheld on that basis.

Section 552.1235 of the Government Code 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). The university states some of the information at issue identifies donors. Thus, the university must withhold the donors' identifying information pursuant to section 552.1235 of the Government Code.

³The 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>.

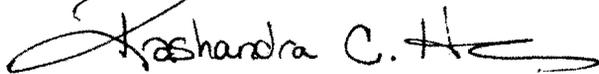
⁴We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested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

In summary, the university must withhold the information you have marked under section 552.102(a) of the Government Code. The university must withhold the donor's identifying information pursuant to section 552.1235 of the Government Code. The university must release the remaining responsive information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Rashandra C. Hayes", with a stylized flourish at the end.

Rashandra C. Hayes
Assistant Attorney General
Open Records Division

RCH/dls

Ref: ID# 515569

Enc. Submitted documents

c: Requestor
(w/o enclosures)