



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 4, 2003

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2003-2270

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178945.

The University of Texas at El Paso (the "university") received a request for all electronic and written correspondence and personal notes from university employees referencing a named individual from February 12, 2002 to January 13, 2003. On January 22, 2003, the requestor narrowed his request to exclude any documents already released pursuant to two previous public information requests. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹

At the outset, we note that the university received the original request for information on January 14, 2002. However, you have provided documentation showing that the university sought clarification of the request on January 17, 2002. In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body and a requestor communicate in good faith to narrow or clarify a request, the Public Information Act (the "Act") permits a tolling of the statutory ten business day deadline imposed by section 552.301. However, a governmental body's request for clarification or narrowing does not give that governmental body an additional ten full days from the date the requestor responds to the clarification request. Rather, "the ten-day deadline is tolled during the

¹ 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.

process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received.” ORD 663 at 5. In this instance, the university received the clarification from the requestor on January 22, 2003 and requested a ruling from this office on January 30, 2003. Accordingly, the university’s request to this office for a ruling was timely.

We note that you argue that the request for all forms of correspondence mentioning the requestor’s name is too broad and requires the university to conduct research, and that the university, therefore, is not required to provide this information. We disagree. Section 552.222(b) of the Government Code provides that if a governmental body is unable to determine the nature of the records being sought, it may ask the requestor to clarify the request so that the desired records may be identified. This office previously has held that a request “must sufficiently identify the information requested and an agency may ask for a clarification if it cannot reasonably understand a particular request.” Open Records Decision Nos. 663 at 4 (1999), 23 at 1-2 (1974); *see also* Open Records Decision No. 304 (1982). Section 552.222(b) also provides that “[i]f a large amount of information has been requested, the governmental body may discuss with the requestor how the scope of a request might be narrowed[.]” The purpose of section 552.222 is to authorize a dialogue between the governmental body and the requestor regarding the scope of the records request.² ORD 663. Section 552.222(b) does not stand for the proposition that a request may be denied merely because it seeks a broad range of documents. If a requestor makes a vague or broad request, the governmental body should make a good faith effort to advise the requestor of the type of documents available that may be responsive so that the requestor may narrow or clarify the request. *See id.* at 5. If the requestor chooses not to narrow a broad request, the governmental body must release all responsive information if not claiming an exception to disclosure applies, or request a ruling under section 552.301 of the Government Code for any information it seeks to withhold. The administrative inconvenience of providing public records is not a ground for refusal to comply with the Act. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976).

Next, we note that some of the submitted information is subsection section 552.022(a) of the Government Code. Section 552.022 provides, in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

.....

² Section 552.222(b) also limits the nature of the inquiries by the governmental body to those regarding the requested documents themselves. This section prohibits the governmental body from inquiring into the purpose for which the requestor seeks the records.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

Gov't Code § 552.022(a)(3). The university must release any requested information that falls within subsections of section 552.022(a), unless that information is expressly confidential under other law. You do not point to, nor are we aware of any, provision of law that makes the voucher at Tab 4 confidential.

We further note that you have not argued that any of the remaining information at Tab 4 is excepted from disclosure. We are not aware of any provision of law that makes the information confidential. Therefore, you must release the information at Tab 4 to the requestor.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 430 U.S. 931. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Upon review of the information, we conclude that none of the information you have highlighted is highly intimate or embarrassing for purposes of common-law privacy. Therefore, you may not withhold the highlighted information under section 552.101 and common-law privacy.

The submitted information contains e-mail addresses obtained from the public. Section 552.137 of the Government Code makes certain e-mail addresses confidential. Section 552.137 provides:

(a) 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 this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code §552.137. You inform us that the members of the public whose e-mail addresses appear in the submitted information have not consented to the release of any e-mail address contained in the submitted materials. The university must, therefore, withhold e-mail addresses of members of the public under section 552.137. We have marked these e-mail addresses for your convenience. You must release the remainder of the requested information to the requestor.

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

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 178945

Enc: Submitted documents

c: Mr. John Yeatman, Jr.
University of Texas at El Paso
Theatre Arts and Film Department
Fox Fine Arts Center, Room 174
El Paso, Texas 79968
(w/o enclosures)