



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 19, 2004

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

OR2004-5976

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# 205642.

The Texas A&M University System (the "system") received a request for various information related to a study and resulting final report titled "Measuring Educational Adequacy in Public Schools." Although you make no arguments and take no position on behalf of the system as to whether the submitted information is excepted from disclosure, you raise sections 552.101, 552.103, 552.106, and 552.111 of the Government Code. You also indicate that you have notified the Office of the Attorney General (the "attorney general") and the Speaker of the House of Representatives (the "Speaker") of the request and of their right to submit arguments to this office as to why the requested information should not be released to the requestor. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). Additionally, the attorney general has notified the Lieutenant Governor's Office and the offices of the co-chairs of the Joint Select Committee on Public School Finance of the request and of their right to submit arguments to this office as to why the requested information should not be released to the

requestor. *Id.* We have considered the submitted arguments and reviewed the submitted representative sample of the responsive information.<sup>1</sup>

Initially, we must address your obligations under the Act. Under section 552.301(b), a governmental body that wishes to withhold information from public disclosure must request a ruling from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. You did not raise section 552.111 within the ten-business-day period mandated by section 552.301(b) of the Government Code. Therefore, you failed to comply with the requirements of section 552.301. Section 552.111 is a discretionary exception to disclosure that does not provide a compelling reason for non-disclosure under section 552.302 of the Government Code. *See* Open Records Decision Nos. 630 at 3 (1994); 325 at 2 (1982). Therefore, the system may not withhold any of the submitted information under section 552.111.

Section 552.103 excepts from required public disclosure "information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party." Gov't Code § 552.103. You state that the system is not a party to litigation to which the information at issue relates. Because the system is not a party to this litigation, the system has no section 552.103 interest in information related to the litigation. *See* Open Records Decision No. 392 (1983). In this type of situation, we require an affirmative representation from the attorney representing the governmental body in the litigation that he or she wants the requested information withheld from disclosure under section 552.103. You indicate that the attorney general represents the Commissioner of Education, the Comptroller and the Texas Education Agency in pending litigation to which the information at issue relates. We note, however, that the attorney general has submitted no arguments against disclosure of the submitted information. *See* Gov't Code § 552.301, .302. Therefore, we find that none of the submitted information may be withheld under section 552.103 of the Government Code.

Next, we address the applicability of section 552.106 to the submitted information. Section 552.106 excepts from required public disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 552.106(a). Although you assert section 552.106 as a possible exception to disclosure for portions of the submitted information, this office has not received arguments from any party establishing the applicability of the claimed exception. *See* Gov't Code §§ 552.301, .302. Therefore, we find

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<sup>1</sup>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.

that none of the submitted information may be withheld under section 552.106 of the Government Code.

You also raise sections 306.003 and 306.004 of the Government Code on behalf of the Speaker. Section 306.003 of the Government Code provides as follows:

- (a) Records of a member of the legislature or the lieutenant governor that are composed exclusively of memoranda of communications with residents of this state and of personal information concerning the person communicating with the member or lieutenant governor are confidential. However, the member or the lieutenant governor may disclose all or a part of a record to which this subsection applies, and that disclosure does not violate the law of this state.
- (b) The method used to store or maintain a record covered by Subsection (a) does not affect the confidentiality of the record.

Gov't Code § 306.003. While section 306.003 applies to records consisting of memoranda of communications and records of a correspondent's personal information, section 306.004 of the Government Code refers to the communications themselves. Section 306.004 provides as follows:

- (a) To ensure the right of the citizens of this state to petition state government, as guaranteed by Article I, Section 27, of the Texas Constitution, by protecting the confidentiality of communications of citizens with a member of the legislature or the lieutenant governor, the public disclosure of all or part of a written or otherwise recorded communication from a citizen of this state received by a member or the lieutenant governor in his official capacity is prohibited unless:
  - (1) the citizen expressly or by clear implication authorizes the disclosure;
  - (2) the communication is of a type that is expressly authorized by statute to be disclosed; or
  - (3) the official determines that the disclosure does not constitute an unwarranted invasion of personal privacy of the communicator or another person.
- (b) This section does not apply to a communication to a member of the legislature or the lieutenant governor from a public official or public employee acting in an official capacity.

- (c) A member or the lieutenant governor may elect to disclose all or part of a communication to which this section applies, and that disclosure does not violate the law of this state.

Gov't Code § 306.004. Upon review of the information at issue, we find that you have not demonstrated the applicability of 306.003 or 306.004, nor has the Speaker indicated that the information is subject to these provisions. Therefore, we find that such information may not be withheld under 306.003 or 306.004 of the Government Code.

We note, however, that the submitted information contains a mobile telephone number that may be personal. 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. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the system may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was received by the system. If the mobile telephone number at issue is a personal number and the employee timely elected to keep his personal information confidential, the system must withhold the mobile telephone number. The system may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election to keep the information confidential.

We also note that the submitted information contains e-mail addresses obtained from the public. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 provides:

- (a) Except as otherwise provided by this section, 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.
- (c) Subsection (a) does not apply to an e-mail address:
  - (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). Section 552.137(a) is not applicable to the types of e-mail addresses listed in section 552.137(c) or 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. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The system must, therefore, withhold e-mail addresses of members of the public that we have marked under section 552.137.

Finally, you note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* 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).

In summary, if the mobile telephone number is personal and the employee at issue timely elected to keep his personal information confidential, the system must withhold the mobile telephone number under section 552.117(a)(1). The system must withhold e-mail addresses from members of the public under section 552.137. The system must release the remaining submitted information. In releasing any information that is protected by copyright, the system must comply with copyright law.

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,

A handwritten signature in cursive script that reads "Cary Grace". The signature is written in black ink and extends across the width of the page.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/seg

Ref: ID# 205642

Enc. Submitted documents

c: Mr. R.A. "Jake" Dyer  
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(w/o enclosures)