



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2004

Ms. Talibah Peugh
Assistant General Counsel
University of Houston System
E. Cullen Building, Suite 311
Houston, Texas 77204-2162

OR2004-10660

Dear Ms. Peugh:

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# 215296.

The University of Houston (the "university") received a request for "current, non-exempt and non-confidential e-mail addresses of students, staff, faculty, and alumni held by the [u]niversity, components and/or university system in digital format." You state that you have released some of the requested e-mail addresses. However, you claim that some of the requested information is excepted from disclosure under section 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Initially, we note that in Open Records Decision No.634 (1995), this office concluded that (1) an educational agency or institution may withhold information that is protected from disclosure by the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA") and that is excepted from disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions to disclosure, and (2) an educational agency or institution that is state-funded may withhold information that is excepted from disclosure by section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without

¹We 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.

the necessity of requesting an attorney general decision as to that exception to disclosure. It appears from your representations that the university has withheld certain portions of the requested information pursuant to Open Records Decision No. 634 (1995) because the information constitutes "student records" that are excepted from disclosure under section 552.114 of the Government Code. We note that in withholding that particular information, the university must comply with FERPA guidelines

We next note that this office ruled on the public availability of similar information held by the university in Open Records Letter No. 2003-3383 (2003). Pursuant to that ruling, the university was required to withhold the information at issue under section 552.137 of the Government Code. You do not indicate that the relevant facts and circumstances have changed since the issuance of the prior ruling. Accordingly, to the extent the information at issue in the present request is identical to the information addressed in Open Records Letter No. 2003-3383, the university must continue to follow that ruling as a previous determination with respect to such information.² Consequently, this ruling only addresses the information you seek to withhold to the extent such information is not identical to the information at issue in Open Records Letter No. 2003-3383.

We next address your claim under section 552.137 of the Government Code, which provides as follows:

(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;

²See Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

- (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. The submitted e-mail addresses include e-mail addresses of members of the public that are within the scope of section 552.137. We determine that, unless the relevant individuals have consented to disclosure, the e-mail addresses of members of the public maintained by the university are excepted from disclosure under section 552.137 of the Government Code. We note, however, that the work e-mail address of an employee of a governmental body and the general e-mail address of a business are not e-mail addresses of members of the public for purposes of section 552.137 and must be released. *See* Gov't Code § 552.137(b).

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

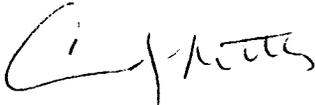
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/krl

Ref: ID# 215296

Enc. Submitted documents

c: Mr. Brad L. Armstrong, J.D.
206 Westwood Terrace
Austin, Texas 78746
(w/o enclosures)