ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2005

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

OR2005-06623

Dear Ms. Longoria:

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# 228702.

The University of Texas at Austin (the "university") received a request for information relating to donations made by Dow Chemical Company ("Dow") and the current number of shares and approximate value of the university's holdings in Dow stock. You indicate that the university does not maintain information relating to the university's holdings in Dow stock because any such shares of stock the university may have received would have been sold as soon as possible.[1] You claim that the submitted information is excepted from disclosure under section 552.1235 of the Government Code. You also inform us, and provide documentation showing, that pursuant to section 552.305 of the Government Code, you notified Dow of the request for information and of its right to submit arguments explaining why the information concerning the company should not be released. *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

[1]We note that the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that received the request. *See* Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989).

(1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted representative sample of information.[2]

Section 552.1235(a) of the Government Code excepts "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[.]" However, this section does not except from disclosure the amount or value of an individual gift, grant, or donation. *See* Gov't Code § 552.1235(b). "Institution of higher education" is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 of the Education Code defines an "institution of higher education" as 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. The university states it is a component of the University of Texas System. Thus, we agree that the university qualifies as an "institution of higher education" under section 61.003 of the Education Code. Further, because section 552.1235 of the Government Code 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 corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. Gov't Code § 311.005(2).

Upon review of the submitted information, we agree that the university must withhold information identifying a donor who made a gift, grant, or donation of money or property to the university pursuant to section 552.1235 of the Government Code. Although the amount or value of an individual gift, grant, or donation is not excepted from disclosure by section 552.1235, in this case there is no way for the university to release the requested dollar amounts without disclosing the identity of the donor. Thus, in this instance, we conclude the university must withhold information that would tend to disclose the identity of a donor. We note, however, that the university has the discretion to release information in a form that does not reveal a specific donor's identity. *See* Attorney General Opinion DM-41 (1991) (while governmental body must provide "suitable copy" of information to requestor, form of information will vary depending on nature of requested information); *see also* Open Records Decision Nos. 682 at 5 (2005) (determining requestor can accept information via website in fulfillment of request), 633 at 3-4 (1995) (determining requestor can agree to accept record substitution), 606 at 3 (1992) (determining requestor can agree to accept new document on which only disclosable information has been consolidated and retyped).

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[2]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.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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).

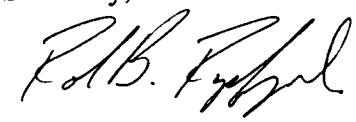
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 228702

Enc. Submitted documents

c: Mr. Sreangsu Acharyya
2400 Longview Street, #112
Austin, Texas 78705
(w/o enclosures)

Mr. Andrew N. Liveris
President and Chief Executive Officer
The Dow Chemical Company
2030 Dow Center
Midland, Michigan 48674
(w/o enclosures)