



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 1, 2005

Ms. Cherry Kay Wolf  
Associate General Counsel  
Texas A&M University System  
200 Technology Way  
College Station, Texas 77845-3424

OR2005-10779

Dear Ms. Wolf:

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# 237212.

Texas A&M International University (the "university") received four requests from the same requestor for information pertaining to the budget of a specified university program. You state that you have no responsive information regarding one of the requests.<sup>1</sup> You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>2</sup>

Initially, you state that you sought clarification from the requestor because the request is unclear. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). We note that a governmental body has a duty to make a good faith

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<sup>1</sup>We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>2</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) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). 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.

effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you have submitted responsive information for our review and raised exceptions to disclosure for these documents, we consider the university to have made a good faith effort to identify information that is responsive to the request, and we will address the applicability the exception you claim to the requested information.

Next, we note that section 552.022 of the Government Code governs the submitted information. Section 552.022 provides that

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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

....

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate;

....

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(1), (5), (15). The submitted information contains a completed audit and a completed report made of, for, or by the university. This information is made public by section 552.022(a)(1). The submitted information also contains completed estimates of the need for the expenditure of public funds that are expressly public under subsection 552.022(a)(5). The remaining submitted information consists of university policy that is posted on the university's system website that is accessible to the public.<sup>3</sup> This information is expressly public under section 552.022(a)(15). As the university regards this information as open to the public, then the university may withhold this information, which we have marked, only to the extent it is made confidential under other law. Likewise, the university may only withhold the completed audit, report, and estimates, which we have marked, if they are confidential under law.

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<sup>3</sup>See The Texas A&M University System Policy 09.04 Litigation (visited Nov. 28, 2005) <<http://sago.tamu.edu/policy/09-04.htm>>.

The university claims the submitted information is excepted under section 552.103, a discretionary exception, which does not constitute other law for the purposes of section 552.022. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103), 473 (1987); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the university may not withhold the submitted information under section 552.103 of the Government Code. However, we will address the applicability of the Family Educational Rights and Privacy Act ("FERPA") and sections 552.117 and 552.147 of the Government Code, which are other law for purposes of section 552.022.

Section 552.026 of the Government Code incorporates FERPA into the Act. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides:

[t]his chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Under FERPA, "education records" are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). Generally, FERPA requires that information be withheld only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* 34 C.F.R. § 99.3 ("personally identifiable information under FERPA includes, among other things, "[o]ther information that would make the student's identity easily traceable"). The university must withhold the student-identifying information we have marked under FERPA.

Section 552.117 may also be applicable to some of the submitted information. Section 552.117 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 university may only withhold information under section 552.117 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 made. For those employees who timely elected to keep their personal

information confidential, the university must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The university may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

Regardless of the applicability of section 552.117, section 552.147 of the Government Code<sup>4</sup> provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, if section 552.117 is not applicable, the university must still withhold the social security numbers contained in the submitted information under section 552.147.<sup>5</sup>

In summary, the university must withhold the student-identifying information we have marked under FERPA. To the extent the employees at issue timely elected confidentiality, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code. If the employees at issue did not timely elect confidentiality, the university must withhold the submitted social security numbers under section 552.147 of the Government Code. The remaining submitted information must be released 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

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<sup>4</sup>Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, ch. 397, 2005 Tex. Sess. Law Serv. 1091 (Vernon) (to be codified at Tex. Gov't Code § 552.147).

<sup>5</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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); *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 Office of the Attorney General 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. 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/segh

Ref: ID# 237212

Enc. Submitted documents

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(w/o enclosures)