



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 2, 2005

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

OR2005-10806

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# 240640.

Texas A&M University (the "university") received a request for "all documents, files, notes, memos, and electronic transmission containing [the requestor's] name or any part of [the requestor's] academic record at Texas A&M or any communication concerning [the requestor]." You state you will withhold the identifying information of students other than the requestor from the requested documents pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). *See* Open Records Decision No. 634 (1995) (concluding that an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by section 552.101 of the Government Code without the necessity of requesting an attorney general decision as to that exception); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code). You claim that portions of the submitted information are excepted from disclosure under sections 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted an investigation report prepared by the university police department and an e-mail message. To the extent any other information responsive to the request existed on the date the university received this request, other than information protected by FERPA, we assume you have released it. If you have not released such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions

apply to requested information, it must release information as soon as possible). We next address the exceptions you have raised in your arguments.

Section 552.117 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. We note section 552.117 encompasses a personal cellular telephone number, provided that the cellular service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular mobile phone numbers paid for by governmental body and intended for official use). 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). You state that the employee whose personal information is at issue timely elected to withhold such information under section 552.024. Accordingly, the university must withhold the employee's personal information you have marked pursuant to section 552.117.

Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. In accordance with section 552.130 of the Government Code, the university must withhold the Texas motor vehicle record information we have marked in the submitted information. *See* Gov't Code § 552.130.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address you have marked in the submitted information is not of a type specifically excluded by section 552.137(c). You inform us the owner of the marked e-mail address has not consented to its release. Therefore, the university must withhold this marked e-mail address in accordance with section 552.137.

You have also marked social security numbers in the submitted information pursuant to section 552.147 of the Government Code.¹ Section 552.147 provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. This exception also 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. We have marked an additional social security number in the submitted information that must be withheld under section 552.147.

¹Added 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).

In summary, the university must withhold the employee's personal information you have marked pursuant to section 552.117. The Texas motor vehicle record information we have marked must be withheld pursuant to section 552.130. The marked e-mail address must be withheld pursuant to section 552.137. The social security numbers in the submitted information must be withheld pursuant to section 552.147. The remaining submitted information must be released.

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); *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,

A handwritten signature in black ink that reads "Ramsey Abarca". The signature is written in a cursive style with a large, sweeping initial "R".

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/krf

Ref: ID# 240640

Enc. Submitted documents

c: Ms. Carolyn Randall-Jaska
5820 Los Robles
College Station. TX 77845
(w/o enclosures)