



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 15, 2005

Ms. Gita P. Bolt  
Interim General Counsel  
Texas Southern University  
3100 Cleburne Street  
Houston, Texas 77004

OR2005-11280

Dear Ms. Bolt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 238148.

Texas Southern University (the "university") received a request for 1) "[a] copy of the total bill incurred from previous open records requests [by this requestor];" 2) "[a] copy of [a named employee's] contract with the university;" 3) "[a] list of all benefits [a named employee] receives as part of her employment agreement;" 4) "[a] copy of the performance bond that covers the entire amount for the erection of the student recreation center;" 5) "[a] copy of the second performance bond that was secured after the regents determined that the original performance bond was fraud[ulent];" 6) "[a] copy of all internal memos and documents that advised the University on the handling of the fraudulent bond;" 7) "[a] copy of any documentation that states who was responsible for performing the due diligence for all bonds and contracts for the erection of the student recreation center; alternatively, a copy of the procedure used to perform the due diligence on all bonds and contracts;" 8) "[a] copy of the vendor number for KAI;" and 9) "the final report on the foundation of the student recreation center that was written by Paradigm Consultants." You state that item 1 will be

released to the requestor. You state that item 5 does not exist.<sup>1</sup> You claim that items 2, 3, 4, 7, 8, and 9 are excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You inform us that item 6 was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2005-07522 (2005). Therefore, assuming that the four criteria for a “previous determination” established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the university must continue to rely on our decision in Open Records Letter No. 2005-07522 with respect to the information that was previously ruled upon in that decision.<sup>2</sup>

Next, we must address the procedural requirements of section 552.301 of the Government Code. Pursuant to section 552.301(b), a governmental body must ask the attorney general for a decision as to whether requested information must be disclosed not later than the tenth business day after the date of receiving the written request for information. *See Gov’t Code* § 552.301(b). Pursuant to section 552.301(e) a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See Gov’t Code* § 552.301(e).

You state that the university received the initial request for information on September 20, 2005. Based on this date, the tenth business day following the university’s receipt of the written request was October 4, 2005. However, you inform us that the university was closed on September 22, 23, 26, and 27. Furthermore, the university asked the requestor to clarify the request on September 28, 2005. *See Gov’t Code* § 552.222. In Open Records Decision No. 663 (1999), this office determined that during the interval in which a governmental body

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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>The four criteria for this type of “previous determination” are 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) of the Government Code; 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 attorney general’s 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 attorney general ruling was based have not changed since the issuance of the ruling. *See Open Records Decision No. 673 (2001)*.

and a requestor communicate in good faith to narrow or clarify a request, the Act permits a tolling of the statutory ten business day deadline imposed by section 552.301. However, a governmental body's request for clarification or narrowing does not give that governmental body an additional ten full days from the date the requestor responds to the clarification request. Rather, "the ten-day deadline is tolled during the process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received." ORD 663 at 5. Thus, the ten business day time period to request a decision from us under section 552.301(b) was tolled on the date that the university sought clarification of the request. *See* Gov't Code § 552.301(b). You state that the university received the clarification on the same day, September 28, 2005, that the university sought clarification. Accordingly, we conclude that the ten business day time period for requesting a decision from our office resumed on September 29, 2005. Thus, the fifteen business day deadline was October 18, 2005. However, the university did not submit the information at issue until October 19, 2005. Consequently, we conclude that the university failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you assert that the submitted information is excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code, these are discretionary exceptions and are not compelling reasons to overcome the presumption that the information is public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see* Open Records Decision Nos. 676 at 12 (2002) (harm to governmental body's interests under section 552.107 not compelling reason for non-disclosure), 663 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). We therefore determine the university may not withhold the submitted information under sections 552.103, 552.107, or 552.111. Sections 552.101 and 552.136 can provide compelling reasons to overcome the presumption of openness under section 552.302; therefore, we will address your arguments under those exceptions.

The university claims that some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure

“information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception protects information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, the university has not asserted any law, and this office is unaware of any law, under which any of the information at issue is considered to be confidential for purposes of section 552.101. Therefore, the university may not withhold any of the information at issue under section 552.101.

Next, we note that some of the submitted information may be subject to section 552.117 of the Government Code.<sup>3</sup> Section 552.117(a)(1) excepts from public disclosure the present and former 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. Gov’t Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, pursuant to section 552.117(a)(1), the university must withhold the information we have marked if the employee at issue elected under section 552.024, prior to the university’s receipt of this request, to keep that information confidential. The university may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election.

Finally, section 552.136 provides in relevant part:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

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<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.117 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Gov't Code § 552.136. The university has not demonstrated, and it is not otherwise clear to this office, that section 552.136 is applicable to any of the information you seek to withhold under this exception. We therefore conclude that you may not withhold any of the information at issue under section 552.136.

In summary, the university must continue to rely on our decision in Open Records Letter No. Open Records Letter No. 2005-07522 with respect to the information that was previously ruled upon in that decision. We have marked the information the university must withhold under section 552.117, if that exception applies. 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).

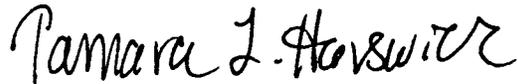
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "Tamara L. Harswick". The signature is written in a cursive style with a large initial 'T' and a stylized 'H'.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/sdk

Ref: ID# 238148

Enc. Submitted documents

c: Mr. Oliver J. Brown  
13315 Peoria Street  
Houston, Texas 77015  
(w/o enclosures)