



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 5, 2006

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

OR2006-00154

Dear Ms. Wolf:

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# 239891.

Texas A&M International University (the "university") received four requests from the same requestor for information pertaining to the budget and expenses of a specified university program. You state that the university does not have information responsive to the request for documents pertaining to the Texas A&M University System.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.103, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup> We have also received and considered comments from

---

<sup>1</sup>We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); see also Attorney General Opinion H-90 (1973); Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975).

<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). 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

the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that, as you acknowledge, we have previously addressed much, if not all, of the information that you have submitted to us for review in Open Records Letter No. 2005-10779 (2005). Thus, with the exception of any documents that have been submitted to this office for the first time with the instant requests, which we will discuss below, you do not inform us, nor are we aware, of any changes with regard to the law, facts, and circumstances on which Open Records Letter No. 2005-10779 was based. Accordingly, we conclude that the university must rely on our decision in Open Records Letter No. 2005-10779 with respect to the information that has been previously submitted to us for review. *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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[.]

Gov't Code § 552.022(a)(1), (5). 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 remaining submitted information consists of completed estimates of the need for the expenditure of public funds that are expressly public under

---

office.

subsection 552.022(a)(5). Accordingly, the university may only withhold the completed audit, report, and estimates, if they are confidential under law.

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 sections 552.117, 552.136, and 552.147 of the Government Code, which are other law for purposes of section 552.022.<sup>3</sup>

Section 552.117 of the Government Code 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>

---

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception like section 552.147 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<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.

Lastly, the submitted information contains bank account and credit card numbers. Section 552.136 of the Government Code states that “[n]otwithstanding 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.” Gov’t Code § 552.136. The university must, therefore, withhold the submitted bank account and credit card numbers under section 552.136. We have marked a representative sample of the type of information that must be withheld under this provision.

In summary, the university must rely on our decision in Open Records Letter No. 2005-10779 with respect to any information that has been previously submitted for our review. For the remainder of the information that has not been the subject of a previous open records letter ruling, we find that, 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 university must withhold the submitted bank account and credit cards numbers under section 552.136 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 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,



Amanda Crawford  
Assistant Attorney General  
Open Records Division

AEC/segh

Ref: ID# 239891

Enc. Submitted documents

c: Mr. Richard Tansey  
c/o Mr. Murray E. Malakoff  
Attorney at Law  
5219 McPherson, Suite 325  
Laredo, Texas 78041  
(w/o enclosures)