



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 29, 2006

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

OR2006-03113

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# 244086.

The University of Texas at Austin (the "University") received a request for eleven categories of information regarding the handling of Rose Bowl ticket requests. You inform us that the university does not maintain some of the requested information.¹ You also state that you will release or have released most of the requested information, but claim that the submitted information is excepted from disclosure under section 552.1235 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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[.]"

¹The Act does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

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. One of the categories of information sought by the requestor is a "list of those 34,000 persons who requested tickets and the dates upon which the requests were received by the University and the number of tickets given to each person." The university informs us that 80% of the persons who received Rose Bowl tickets contributed to the Longhorn Foundation, and explains that the Longhorn Foundation is a component of the university's Department of Intercollegiate Athletics. Thus, we agree that a donation to the Longhorn Foundation qualifies as a donation to an "institution of higher education." 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 id.* § 311.005. "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

The university has submitted a list of persons who requested tickets to the Rose Bowl showing the number of Rose Bowl tickets requested, the number of Rose Bowl tickets allocated, and the number of season tickets held by that person. The university states that donors to the Longhorn Foundation "consumed approximately 80% of the University's 22,000 available tickets. Another 10% of the University's total allotment, or approximately 2200 tickets, were reserved for students. The balance were earmarked for U.T. System Regents, U.T. System and University administrative offices and their guests (primarily donors), state and federal officials, Big 12 Conference Officials, and other University staff, administrators, coaches and their families, players' guests, and the Longhorn Band." The submitted list does not segregate the donors, students, and other persons who received tickets. Moreover, you have not identified the persons on the list who are donors to the Longhorn Foundation. Based on your arguments, however, we find that the listed names of donors to the Longhorn Foundation are excepted from disclosure pursuant to section 552.1235 of the Government Code. However, as you indicate that the remaining persons on the list are not donors to the Longhorn Foundation, their names may not be withheld under section 552.1235. Additionally, you do not explain, nor can we discern from our review, how the information showing the number of Rose Bowl tickets requested, the number of Rose Bowl tickets allocated, or the number of season tickets held would reveal the identity of a donor to the Longhorn Foundation. Thus, this information may not be withheld under section 552.1235.

You also indicate that the submitted list contains the names of university students. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 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). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). We note that Open Records Decision No. 634 (1995) permits an educational agency or institution to withhold from public disclosure information that is protected by FERPA without the necessity of requesting a ruling from the attorney general. Thus, the university must withhold the names of students contained in the submitted list pursuant to FERPA. However, information showing the number of Rose Bowl tickets requested, the number of Rose Bowl tickets allocated, or the number of season tickets held does not identify a student of the university, and may not be withheld under FERPA. As you inform us that the remaining names on the list are neither donors to the Longhorn Foundation nor university students, the remaining names and ticket information must be released.

In summary, the listed names of donors to the Longhorn Foundation must be withheld pursuant to section 552.1235 of the Government Code. The names of students must be withheld pursuant to FERPA. The remaining names and the information showing the number of Rose Bowl tickets requested, the number of Rose Bowl tickets allocated, and the number of season tickets held 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,



José Vela III
Assistant Attorney General
Open Records Division

JV/krl

Ref: ID# 244086

Enc. Submitted documents

c: Ms. Patricia A. Moore
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Austin, Texas 78759
(w/o enclosures)