



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2006

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

OR2006-12355

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# 262363.

The University of Texas (the "university") received two requests for information relating to season ticket holders. You seek to withhold the requested information under sections 552.117, 552.1235, and 552.137 of the Government Code and the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. We have considered your arguments and have reviewed the information you submitted.<sup>1</sup> We also have considered the comments that we received from an attorney for one of the requestors.<sup>2</sup>

You state that some of the requested information relates to students. The United States Department of Education Family Policy Compliance Office (the "DOE") recently informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling

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<sup>1</sup> This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>2</sup> See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

process under the Act.<sup>3</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). Thus, because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted information. Such determinations under FERPA must be made by the educational authority that is in possession of the education records.<sup>4</sup>

Next, we address the university’s obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires a governmental body to ask for the attorney general’s decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov’t Code § 552.301(b). Section 552.301(e) requires a governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body’s claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You concede that the university did not comply with section 552.301 in requesting this decision. Therefore, the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As the university’s claims under sections 552.117, 552.1235, and 552.137 of the Government Code can provide compelling reasons for non-disclosure, we will consider your arguments.

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<sup>3</sup> A copy of this letter may be found on the Office of the Attorney General’s website: [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

<sup>4</sup>In the future, if the agency does obtain parental consent to submit unredacted education records and the agency seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

Section 552.1235 of the Government Code excepts from public disclosure “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[.]” Gov’t Code § 552.1235(a). However, this section does not except from disclosure the amount or value of an individual gift, grant, or donation. *See id.* § 552.1235(b). “Institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 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. *See Educ. Code* § 61.003. Because section 552.1235 does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See Gov’t Code* § 311.005. “Person” includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

In this instance, the submitted information lists the names, places of business, mailing addresses, and e-mail addresses of season ticket holders for football (2005 and 2006), men’s and women’s basketball (2005-2006), and baseball and women’s softball (2006). You state that substantial percentages of these season ticket holders also are donors to the university, for the purposes of 552.1235(a) of the Government Code. We note, however, that the submitted information does not itself distinguish between those season ticket holders who are donors and those who are not. Likewise, you have not otherwise identified the season ticket holders who are donors. Nevertheless, and on the basis of your arguments, we conclude that to the extent that the submitted season ticket holder information consists of the names, physical addresses, and e-mail addresses of donors, such information is excepted from disclosure under section 552.1235 of the Government Code. We have marked a representative sample of the information that must be withheld on this basis, provided that the information relates to a donor. Because we find that a post office box number does not tend to disclose a person’s identity, we conclude that the university may not withhold a donor’s post office box number under section 552.1235. Likewise, because you do not contend that any other information contained in the submitted documents would tend to identify a donor, the university may not withhold any of the remaining information under section 552.1235.

You also raise section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under

section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential.

You state that some of the listed season ticket holders who are not donors may be university employees. You claim the protection of section 552.117 for the home addresses of such employees who timely elected confidentiality. However, you have not specifically identified any person listed in the submitted information as being a university employee whose home address would be protected by section 552.117. Nevertheless, section 552.117(a)(1) excepts from disclosure the home address of a current or former university employee who timely requested confidentiality for that information under section 552.024. Any such information that is not otherwise protected by section 552.1235 must be withheld under section 552.117(a)(1). We note that a post office box number is not a "home address" for the purposes of this exception. *See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 552.117 is to protect public employees from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

Lastly, we address your claim under section 552.137 of the Government Code. This exception provides in part:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to

a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

Gov't Code § 552.137(a)-(c). Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees

You indicate that the university will release e-mail addresses that it provides to current faculty and staff members who are season ticket holders, except for those that are protected by section 552.1235. You claim an exception under section 552.137 for other e-mail addresses provided to the university by season ticket holders that are not protected by section 552.1235. We agree that the university must withhold such personal e-mail addresses under section 552.137, unless the owner of the e-mail address has affirmatively consented to its public disclosure.

In summary: (1) the names, physical addresses, and e-mail addresses of donors to the university must be withheld from disclosure under section 552.1235 of the Government Code; (2) the home address of a current or former university employee must be withheld under section 552.117(a)(1) of the Government Code if the employee timely requested confidentiality for that information under section 552.024; and (3) personal e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its public disclosure. Any information that is not protected by section 552.1235, section 552.117, or section 552.137 must be released. This ruling does not address the applicability of FERPA to the submitted information. Should the university determine that all or portions of the submitted information consists of "education records" that must be withheld under FERPA, the university must dispose of that information in accordance with FERPA, rather than the Act.

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).

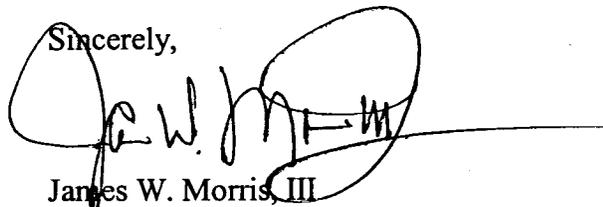
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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, appearing to read "James W. Morris, III", with a horizontal line extending to the right from the end of the signature.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 262363

Enc: Submitted documents

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