



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2006

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

OR2006-14777

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# 267474.

Texas A&M University-Galveston (the "university") received a request for (1) salaries of university staff in 2005 and 2006, (2) academic evaluation forms of all faculty for 2005 and 2006 by two named individuals, and (3) a copy of a university publication concerning faculty. You claim that the requested information is excepted from disclosure under section 552.103 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 (interested party may submit comments stating why information should or should not be released).

We must first address the applicability of section 552.007 of the Government Code to the requested information. Section 552.007 provides that if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law. *See* Gov't Code 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential

by law). You inform us that the university has published the submitted document titled "Texas A&M University Faculty Promotion Faculty Tenure 2006, A Celebration of Achievement"; therefore, pursuant to section 552.007, the university may not now withhold this information unless its release is expressly prohibited by law. Section 552.103 of the Government Code is a discretionary exception under the Act, and does not constitute law that makes information confidential or expressly prohibits its release for purposes of section 552.007. *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); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived). Accordingly, the university may not withhold this information under section 552.103, but instead must release it to the requestor.

The remaining information is subject to section 552.022 of the Government Code, which provides in relevant part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, 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;

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(1)-(2). The submitted Faculty Evaluation/Activity Planning Reports are subject to section 552.022(a)(1), and the submitted information responsive to the requested salary information is subject to section 552.022(a)(2). As we noted above, section 552.103 is a discretionary exception under the Act; accordingly, section 552.103 does not constitute "other law" for purposes of section 552.022. *See Dallas Area Rapid Transit*, 4 S.W.3d at 475-76; ORD 542 at 4. Accordingly, the university may not withhold this information under section 552.103. Therefore, the university must release the remaining information 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).

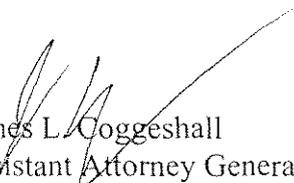
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 267474

Enc. Submitted documents

c: Mr. Radoslav Dimitric
343 Downing Street
Pittsburgh, Pennsylvania 15219
(w/o enclosures)