



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2007

Ms. Carol Longoria
University of Texas University
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2007-10732

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# 286959.

The University of Texas at Dallas (the "university") received a request for specified e-mails from a named professor's account from January 2007 to the present.¹ The university does not raise any exceptions against the disclosure of the requested information. However, a law firm (the "firm") representing the named professor has submitted comments asserting that the requested information is not subject to the Act, or alternatively, is excepted from disclosure under sections 552.101 and 552.109 of the Government Code. *See Gov't Code* § 552.304 (interested third party may submit comments explaining why submitted information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.²

¹You note that the university sought clarification of the request. *See Gov't Code* § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body); *see also* Open Records Decision No. 663 at 5 (1999)(discussing requests for clarification).

²We 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 office.

The firm contends that the requested information is outside the scope of the Act. Section 552.002 provides that “public information” consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002(a). Thus, under this provision, information is generally “public information” within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of an individual. *See Open Records Decision No. 635 (1995)*. The university states that the responsive information “may be outside the scope of the [Act] because the responsive information is unrelated to the [u]niversity’s official business.” In addition, the firm states that the requested information “relates to information which is directly related to [the named professor’s] candidacy and office holding as a town councilmember . . . and has no relation to his position as a professor at the [university.]” The firm further notes that the information was not collected by, for, or on behalf of the university, but rather that the university “simply allows its faculty to use the university’s e-mail system for incidental or personal use for [their] convenience.” Based upon these representations and our review, we conclude that none of the requested information constitutes public information for purposes of section 552.002, and thus, the university need not release the requested information. *See ORD 635 at 4* (statutory predecessor to section 552.002 was not applicable to personal information unrelated to official business and created or maintained by a state employee involving de minimis use of state resources).

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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/jb

Ref: ID# 286959

Enc. Submitted documents

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