



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 25, 2008

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

OR2008-02492

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# 302877.

The University of Texas Southwestern Medical Center at Dallas (the "center") received two requests for information pertaining to center donors and wine purchases made using specified credit card accounts. We note that the center asked for and received clarification regarding the request received on November 30, 2007. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification). You also inform this office that upon review of the request received on December 13, 2007, the center has determined that it maintains no information responsive to this request. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*); Open Records Decision No. 452 at 3. Accordingly, you have withdrawn your request for a ruling pertaining to the December 13, 2007 request. However, with respect to the November 30, 2007 request, you maintain that the submitted information is excepted from disclosure under sections 552.1235 and 552.136 of the Government Code. We note that you failed to raise section 552.136 within the ten business day deadline mandated in section 552.301(b). *See* Gov't Code § 552.301(b). However, because section 552.136 is a mandatory exception that can provide a compelling reason to withhold information, we will consider your arguments under this exception. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex.App.—Austin 1990,

no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302). We have considered the exceptions you claim and reviewed the submitted sample of information.¹

Section 552.1235 excepts from 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). We note that 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.

You have marked information at Tab 5 that the center seeks to withhold under section 552.1235. We understand you to contend that the marked information either identifies or tends to identify donors of the center. You state that these donors have not granted the center permission to reveal their identity. Based upon your representations and our review, we agree that most of the marked information identifies persons as actual donors to the center. However, you have failed to establish that a portion of the information, which we have marked for release, identifies or tends to identify persons in their actual capacity as donors to the center. Further, we conclude that section 552.1235 is not applicable to the identifying information of individuals who are deceased. Thus, section 552.1235 is not applicable to this information. Accordingly, with the exception of the information we have marked for release, we conclude that the center must withhold the information that you have marked under section 552.1235.

You also raise section 552.136 of the Government Code, which provides as follows:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

¹We 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.

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. You have marked information at Tab 5 that the center seeks to withhold under this exception. We agree that the credit card account information, which you have marked, must be withheld under section 552.136.

In summary, you must withhold the information that you have marked under section 552.1235 of the Government Code. You must withhold the information that you have marked under section 552.136. The remaining information 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Justin D. Gordon
Assistant Attorney General
Open Records Division

JDG/jh

Ref: ID# 302877

Enc. Submitted documents

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