



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2008

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

OR2008-03628

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# 305063.

The Texas A&M University (the "university") received a request for the employment file of a named individual. You state that the university has released most of the requested information. You claim that a portion of the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that is made confidential by statute. You contend that the information you have marked in Exhibit B-2 is excepted from disclosure under the Engineering Practice Act, chapter 1001 of the Occupations Code. Section 1001.212 of the Occupations Code provides:

- (a) A statement made by a person providing a reference for an applicant and other pertinent information compiled by or submitted to the [Texas Board of Professional Engineers (the "board")] relating to an applicant for licensure under this Act is privileged and confidential.

(b) Information described in Subsection (a) may be used only by the board or its employees or agents who are directly involved in the application or licensure process. The information is not subject to discovery, subpoena, or other disclosure.

Occ. Code § 1001.212. You do not inform us, and the submitted documents do not reflect, that the information you have marked in Exhibit B-2 was submitted to or compiled by the board. Therefore, we find that you have failed to demonstrate the applicability of section 1001.212 to the information at issue. Accordingly, you may not withhold this information under section 552.101 of the Government Code on the basis of section 1001.212 of the Occupations Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov’t Code § 552.137(a)-(c). You state that the e-mail addresses you have marked are not the types specifically excluded by section 552.137(c). You also inform us that the individuals whose e-mail addresses are at issue have not affirmatively consented to their release. Therefore, we agree that the university must withhold the e-mail addresses you have marked in Exhibit B-1 under section 552.137 of the Government Code. As you raise no further exceptions to disclosure, the remaining submitted 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

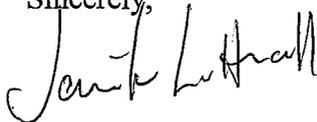
Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/eeg

Ref: ID# 305063

Enc. Submitted documents

c: Ms. Kara Schechter
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200 Technology Way
College Station, Texas 77845-3424
(w/o enclosures)