



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 24, 2008

Ms. Valerie Coleman-Ferguson
Associate General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2008-10052

Dear Ms. Coleman-Ferguson:

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# 317781.

The University of Houston (the "university") received a request for the following information: all e-mails between apparel task force members; all e-mails between two named individuals from January 1, 2008, through May 14, 2008; all minutes from the faculty senate executive committee meetings from January 1, 2008, through May 14, 2008; all correspondence from a named individual to the faculty senate executive committee from January 1, 2008, through May 14, 2008; minutes from the April 25, 2008, meeting of the UC policy board; and the resume, salary information, and job description for a named individual. You claim that the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

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.

Initially, you state that some of the requested information was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2008-06892 (2008). We have no information to allow us to conclude that the law, facts, or circumstances on which the previous ruling was based have changed. We therefore agree that the university may continue to rely on Open Records Letter Ruling No. 2008-06892 with respect to the requested information that is the subject of that ruling. *See* Gov't Code § 552.301(a); ORD 673 at 6-7 (listing elements of first type of previous determination under Gov't Code § 552.301(a)).

Next, we note that you have not submitted information responsive to portions of the request, including minutes from the faculty senate executive committee meetings and the resume, salary, and job information of a named individual. To the extent any information responsive to these portions of the request existed on the date the university received the request, we assume you have released it. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We must next address the university's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). You inform us that the university received this request on May 14, 2008. Thus, allowing for the Memorial Day holiday, the fifteen day deadline to comply with section 552.301(e) was June 5, 2008. The post office mark on your envelope shows that you did not submit a copy of the requested information to this office until June 6, 2008. *See id.* § 552.308 (concerning timeliness of action by U.S. or interagency mail). Consequently, we find that the university failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 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); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.111 of the Government Code, this exception is discretionary in nature. Section 552.111 serves only to

protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for the purposes of section 552.302. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work product privilege under section 552.111 is not compelling reason to withhold information under section 552.302), 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the requested information may not be withheld under section 552.111 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code.² *See* Gov't Code § 552.117(a)(1). We note that section 552.117 also encompasses a personal cellular telephone number, provided that the service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cell phone numbers provided and paid for by governmental body and intended for official use). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, pursuant to section 552.117(a)(1), if the employee at issue timely elected to keep his information confidential, then the university must withhold the employee's personal information. Accordingly, we have marked the information that must be withheld under section 552.117(a)(1) if that section applies. However, you may not withhold this information under section 552.117(a)(1) if the employee did not make a timely election to keep his information confidential.

We note, however, that a portion of the submitted information includes a personal e-mail address that is excepted from disclosure under section 552.137 of the Government Code. Section 552.137 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). The e-mail address at issue does not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that a member of the public has affirmatively consented to the release of this e-mail address. Therefore, the university must withhold the e-mail address that we have marked under section 552.137.

In summary, the university may continue to rely on Open Records Letter Ruling No. 2008-06892 (2008) with respect to the required disclosure of the requested information

²The Office of the Attorney General will raise a mandatory exception like sections 552.117 and 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

that is the subject of that ruling. To the extent that the employee at issue timely elected confidentiality for the information under section 552.024 of the Government Code, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The university may withhold the information we have marked under section 552.137 of the Government Code. 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). If the governmental body does not file suit over 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).

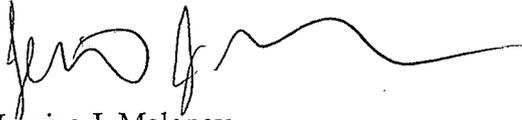
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read 'Jessica J. Maloney', with a long horizontal flourish extending to the right.

Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 317781

Enc. Submitted documents

c: Mr. Timothy J. O'Brien
1303 Ruthven Street
Houston, Texas 77019-5139
(w/o enclosures)