



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 20, 2008

Mr. Jerry M. Brown  
Assistant General Counsel  
Texas A&M University System  
200 Technology Way, Suite 2079  
College Station, Texas 77845-3424

OR2008-11407

Dear Mr. Brown:

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# 319570.

Texas A&M University (the "university") received a request for the tenure and promotion files for two named professors. You state that you will release some information to the requestor. You also state that the university has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). However, information subject to section 552.117(a)(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after

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<sup>1</sup>We note that our office is prohibited from reviewing these educational records to determine whether appropriate redactions under FERPA have been made; therefore, we will not address the applicability of FERPA to any of the submitted records.

the request for information was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). You state that the employee whose information is at issue elected to keep his personal information confidential prior to the date on which the university received this request. Accordingly, you must withhold the information you have marked in Document C-1 under section 552.117(a)(1) 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 addresses in Documents B-1 and B-2 are not a type specifically excluded by section 552.137(c). You state that the owners of the e-mail addresses have not consented to their release. As such, the university must withhold the e-mail addresses that you have marked in Documents B-1 and B-2 under section 552.137 unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).

In summary, you must withhold the information in Document C-1 that you have marked under section 552.117 of the Government Code. You must also withhold the e-mail addresses that you have marked in Documents B-1 and B-2 under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. The remaining information must be released 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 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,



Bill Longley  
Assistant Attorney General  
Open Records Division

BL/eeg

Ref: ID# 319570

Enc. Submitted documents

c: Mr. Radoslav Dimitric  
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(w/o enclosures)