



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2009

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

OR2009-01763

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# 335411 (TAMU Request # 08-377).

Texas A&M University (the "university") received a request for all of the requestor's educational records.¹ You claim that portions of the requested information are 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 representative sample of the information at issue.²

¹You note that the university initially received the present request on October 29, 2008. In accordance with section 552.263 of the Government Code, the university required the requestor to provide bond for payment of anticipated costs for the preparation of the requested information. *See* Gov't Code § 552.263(a). The university received the required bond on November 24, 2008, and, accordingly, that is the date on which we consider the university to have received the present request. *See id.* § 552.263(f).

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.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, .117(a)(1). Section 552.117 also encompasses a personal cellular telephone number, provided that a governmental body does not pay for the cell phone service. *See* Open Records Decision No. 506 at 5-6 (1988) (Gov't Code § 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You inform us that each of the university employees whose information is at issue timely elected in accordance with section 552.024 to keep their section 552.117(a)(1) information confidential. Therefore, the university must withhold the telephone numbers you have marked under section 552.117(a)(1) to the extent that the employees concerned paid for their own telephone service. The university also must withhold the family information you have marked under section 552.117(a)(1).

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 from protection by subsection (c). Gov't Code § 552.137(a)-(c). You state that the e-mail address you have marked is a personal e-mail address of a member of the public who has not consented to the public disclosure of her e-mail address. You also state that this e-mail address is not of a type specifically excluded from protection by section 552.137(c). However, we note that the e-mail address at issue was not provided by a member of the public to the university but was instead provided by a university employee to a student as part of personal correspondence. We therefore conclude that this e-mail address is not subject to section 552.137 and may not be withheld from disclosure on that basis.

In summary, the university: (1) must withhold the telephone numbers you have marked pursuant to section 552.117(a)(1) of the Government Code to the extent that the involved cellular phones were not paid for by the university, (2) must withhold the family information you have marked pursuant to section 552.117(a)(1) of the Government Code, and (3) must release the remaining requested information.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/eb

Ref: ID# 335411 (TAMU Request # 08-377)

Enc. Submitted documents

cc: Requestor
(w/o enclosures)