



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 14, 2009

Mr. Renaldo L. Stowers
Senior Associate General Counsel
Office of the General Counsel
University of North Texas System
P.O. Box 310907
Denton, Texas 76203-0907

OR2009-04916

Dear Mr. Stowers:

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# 339815 (UNT PIR Nos. 09-092/09-063).

The University of North Texas and the University of North Texas Police Department (collectively the "university") each received a request for a copy of their take-home vehicle policy, a list of all take-home vehicles provided by the university including their purchase price, to whom the vehicle is assigned, and what city the person lives in, and the total spent on the vehicles including fuel and maintenance, for a specified period of time. You state that you have released some of the information. You claim that portions of the remaining information are excepted from disclosure under sections 552.117 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note that the university did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that must be followed in asking this office to determine whether requested information is excepted from

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.

public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) provides that a governmental body must ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). You inform us that the university received the instant request for information on January 21, 2009. You also state, and provide documentation showing, the university was closed for business on January 27, 2009. Thus, the university's ten-business-day deadline under section 552.301(b) was February 5, 2009. However, you did not request a ruling from this office until February 6, 2009. Thus, 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 the governmental body demonstrates a compelling reason 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); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.117 and 552.1175 of the Government Code can provide compelling reasons to overcome this presumption; therefore, we will consider whether these sections require you to withhold the submitted information.

We also note that certain information has been redacted from the submitted documents. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code §§ 552.301(a), .302. Pursuant to section 552.301(e)(1)(D), the governmental body must submit the requested information at issue, or representative samples if the information is voluminous, unless the information is the subject of a previous determination. *See id.* § 552.301(a), (e)(1)(D); Open Records Decision No. 673 (2001) (previous determinations). Pursuant to the previous determination issued under section 552.117(a)(2) of the Government Code in Open Records Decision No. 670 (2001), all governmental bodies are authorized to withhold certain personal information relating to a peace officer, including the officer's current and former home addresses and telephone numbers, personal cell phone and pager numbers, social security number, and family member information, without the necessity of requesting a decision under the Act.² *See* ORD 670 at 6-7. Moreover, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision under the Act. However, some of the information that the university has redacted does not fall within the scope of the previous determination in Open Records Decision No. 670 or section 552.147. You do not indicate, and our own records do not otherwise reflect, that the university is authorized to withhold any other types of information without requesting a decision. In this instance, we are able

²Although you assert section 552.1175 for this information, it is properly addressed under section 552.117(a)(2) since the university maintains the information as the employer of the officers at issue.

to ascertain the nature of the redacted information and thus are not prevented from determining whether it is excepted from disclosure. In the future, however, the university should refrain from redacting any information submitted to this office in connection with a request for a decision under the Act that it is not authorized to redact. An unauthorized redaction may result in a determination that the information must be released. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

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. We note that section 552.117 does not encompass an employee's date of birth, race, or gender. Whether a particular item 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 only be withheld under section 552.117(a)(1) 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. You inform us that the employees whose information is requested timely requested confidentiality for that information under section 552.024.

We note that some of the employees did not elect to keep some categories of information confidential. Accordingly, the university may not withhold the categories of information these employees have chosen to release. We also note that some of the employees whose information is requested have not made any election, and the university may not withhold any of their information under any provision of section 552.117. Thus, the university must withhold only the information that we have marked under section 552.117(a)(1) of the Government Code.

Some of the submitted information is subject to section 552.117(a)(2) of the Government Code, which excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information pertaining to a peace officer regardless of whether the officer elected under section 552.024 or 552.1175 of the Government Code to keep such information confidential.³ We have marked the information that must be withheld under section 552.117(a)(2) of the Government Code.

³"Peace officer" is defined by Article 2.12 of the Texas Code of Criminal Procedure.

We note that portions of the remaining information are subject to section 552.137 of the Government Code.⁴ 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). Gov’t Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. We have marked e-mail addresses which are not a type specifically excluded by section 552.137(c). Therefore, the university must withhold the marked e-mail addresses pursuant to section 552.137 of the Government Code, unless the university has received consent for their release.

In summary, the university must withhold the information which we have marked under section 552.117(a)(1) of the Government Code. Additionally, the university must withhold the information we have marked under section 552.117(a)(2) of the Government Code. Finally, the university must withhold the e-mail addresses we have marked pursuant to section 552.137, unless the university has received consent for their release. The remaining information must be released.

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,



Travis Tidmore
Assistant Attorney General
Open Records Division

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⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Ref: ID# 339815

Enc. Submitted documents

cc: Requestor
(w/o enclosures)