



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

May 18, 2009

Ms. Ruth E. Shapiro  
Assistant General Counsel  
University of Houston System  
311 East Cullen Building  
Houston, Texas 77204-2028

OR2009-06730

Dear Ms. Shapiro:

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# 343384.

The University of Houston (the "university") received a request for (1) all documents and correspondence involving the university's president and PBS Houston manager pertaining to KUHT programming as well as correspondence between congress members and university's regents from November 1, 2008 to the date of the request and (2) the total amount of money received by KUHT from the federal government during the last complete fiscal year.<sup>1</sup> You state you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.107, 552.111, and 552.117 of the Government Code, and privileged under rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted information.

Initially, we note that some of the submitted information is not responsive to the present request because it was created after the date of the request. This ruling does not address the public availability of this information, which we have marked, and the university is not required to release the marked information in response to the request.

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<sup>1</sup>You inform us that the requestor has agreed to the redaction of personal e-mail addresses and identifiable donor information. Accordingly, this type of information is not responsive to this request and we do not address its availability in this ruling.

Next, we must address the university's procedural obligations under the Act. Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. See Gov't Code § 552.301(e)(1)(A)-(D). You state that the university received the request on February 27, 2009 and that its offices were closed on March 19 and 20, 2009. As such, your fifteen-business-day deadline was March 24, 2009. Although you timely raised all of your arguments, you did not submit the information at issue until March 25, 2009. Consequently, the university failed to comply with the procedural requirements mandated by section 552.301(e).

~~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) (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, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. See Open Records Decision No. 630 (1994). Although you raise sections 552.107 and 552.111 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5, these exceptions and rules are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive section 552.107), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver); see also Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the university has waived its claims under sections 552.107 and 552.111 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5, and may not withhold any of the submitted information based upon these exceptions and rules. However, the university's claim under section 552.117 can provide a compelling reason to withhold information; therefore we will consider your argument under this exception.~~

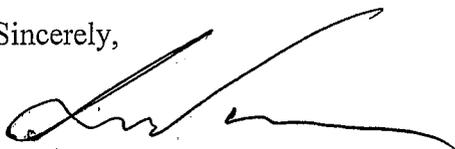
Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, cellular telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). 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. We have marked the information that the university must withhold under section 552.117 to the extent it pertains to a university employee who timely elected confidentiality.

In summary, the university must withhold the information we have marked under section 552.117 to the extent it pertains to a university employee who timely elected confidentiality under section 552.024. The remaining information must be released to the requestor.

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](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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/eeg

Ref: ID# 343384

Enc. Submitted documents

c: Requestor  
(w/o enclosures)