



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2010

Ms. Neera Chatterjee
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-03697

Dear Ms. Chatterjee:

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# 374815 (OGC # 128357).

The University of Texas at Austin (the "university") received a request for the requestor's employment records maintained by the university's Division of Housing and Food Service, including communications pertaining to the requestor's employment. You state you will make some of the requested information available to the requestor. You state you have redacted a credit card number under section 552.136 of the Government Code pursuant to Open Records Decision No. 684 (2009).¹ You claim portions of the submitted information are not subject to the Act. You also claim that some of the submitted information is excepted from disclosure under section 552.107 of the Government Code. We have considered your submitted arguments and reviewed the submitted representative sample of information.²

¹We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a credit card number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

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.

Initially, you assert the University of Texas Electronic Identification Numbers ("UTEIDs") and IP address contained in the submitted documents are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office that when combined with an individual's password, the UTEIDs serve as "the required log on protocol to access the computer mainframe, the University's centralized hub that runs all its high-level electronic functions." You indicate the UTEIDs are used solely to access the university's computer mainframe and that the UTEIDs and IP address have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the UTEIDs and IP address contained in the submitted documents do not constitute public information under section 552.002 of the Government Code. We therefore conclude the UTEIDs and IP address are not subject to the Act and need not be released to the requestor.

You raise section 552.107 of the Government Code for a portion of the remaining information. Section 552.107(1) protects information coming within the attorney-client privilege. When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, no pet.). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922

S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You claim a portion of the remaining information consists of a communication between a university employee and a university attorney that was made for the purpose of facilitating the rendition of professional legal services to the university. You further state the communication was intended to be confidential, and that the confidentiality of the communication has been maintained. Upon review, we find the university may withhold the e-mail you have marked pursuant to section 552.107 of the Government Code.

In summary, the UTEIDs and IP address are not subject to the Act and need not be released to the requestor. The university may withhold the e-mail you have marked pursuant to section 552.107 of the Government Code. 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, toll free, at (888) 672-6787.

Sincerely,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/eb

Ref: ID# 374815

Enc. Submitted documents

cc: Requestor
(w/o enclosures)