



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 19, 2010

Mr. Brian S. Nelson
General Counsel
Lone Star College System
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2010-07191

Dear Mr. Nelson:

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# 380062 (LSCS File No. PR10-0302-00105).

The Lone Star College System (the "system") received a request for all materials gathered during the investigation of the requestor's discrimination claim. You claim the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information consists of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the system may not withhold any of the submitted information under section 552.103 of the Government Code. However, we note portions of the submitted information are subject to sections 552.117 and 552.137

of the Government Code, which are other law for the purpose of section 552.022 of the Government Code.¹ Accordingly, we will address these exceptions.

Section 552.117(a)(1) excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The system may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the employees at issue timely elected to withhold their home addresses and personal telephone numbers, the system must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employees did not timely elect to withhold this information, then the system may not withhold the marked information under section 552.117(a)(1) of the Government Code.

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 by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not specifically excluded by section 552.137(c). Therefore, the e-mail addresses we have marked must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release.² *See id.* § 552.137(b).

In summary, to the extent the employees at issue timely elected to withhold their personal information, the system must withhold the home addresses and personal telephone numbers we have marked pursuant to section 552.117 of the Government Code. The system must withhold the personal e-mail addresses we have marked pursuant to section 552.137 of the

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

²We 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 an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Government Code, unless the owners have affirmatively consented to their release. The remaining information must be released to this requestor.³

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,



Amy L.S. Shipp
Assistant Attorney General
Open Records Division

ALS/rl

Ref: ID# 380062

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

³We note the information being released in this instance includes information that may be confidential with respect to the general public. Therefore, if the system receives another request for this information from an individual other than this requestor, the system must again seek a ruling from this office.