



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 9, 2010

Mr. R. Brooks Moore
Assistant General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2010-12031

Dear Mr. Moore:

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# 389683 (TAMU 10-245).

Texas A&M University (the "university") received a request for any correspondence among university officials regarding athletic conference expansion, including discussion of television markets and rights during the past eight months. You state that the university will release some of the requested information to the requestor. Although you state the university takes no position with respect to the public availability of the submitted information, you state its release may implicate the proprietary interests of the Big 12 Conference (the "Big 12"). Accordingly, you state, and provide documentation showing, the university notified the Big 12 of the request and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code § 552.305(d); see also Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain the applicability of exception to disclose under Act in certain circumstances).* We have reviewed the submitted information.

Initially, you acknowledge, and we agree, the university failed to submit the responsive information within the statutory time period prescribed by section 552.301(e) of the Government Code. *See Gov't Code § 552.301(e).* Pursuant to section 552.302 of the

Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption 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; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). We note some of the submitted information may be excepted from disclosure under sections 552.117 and 552.137 of the Government Code.¹ Because these sections and third party interests can provide compelling reasons to withhold information, we will consider whether any of the submitted information must be withheld on any of those grounds.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the Big 12 explaining why any of the submitted information should not be released. Therefore, we have no basis to conclude the Big 12 has protected proprietary interests in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Consequently, the university may not withhold any of the submitted information on the basis of any proprietary interests the Big 12 may have in the information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. 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) (section 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 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The

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

university may only withhold information under section 552.117(a)(1) on behalf of a former or current employee who has made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. Therefore, the university must withhold the cellular telephone number we have marked pursuant to section 552.117(a)(1) if the employee concerned timely elected to keep the marked information confidential under section 552.024; however, the university may only withhold this cellular telephone number if the employee concerned paid for the cellular telephone service with his own funds. If the employee did not make a timely request for confidentiality or did not pay for the cellular telephone service, the information at issue must be released.

The remaining information includes e-mail addresses subject to section 552.137 of the Government Code, which 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 at issue are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to their release. *See id.* § 552.137(b).²

In summary, the university must withhold the cellular telephone number we have marked pursuant to section 552.117(a)(1) if the employee concerned timely elected to keep his personal information confidential under section 552.024; however, the university may only withhold this cellular telephone number if the employee paid for the cellular telephone service with his own funds. The university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses have affirmatively consented to 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

²This office recently issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes withholding of 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.

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,

A handwritten signature in black ink, appearing to read "Tamara Wilcox". The signature is fluid and cursive, with the first name "Tamara" and last name "Wilcox" clearly distinguishable.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/dls

Ref: ID# 389683

Enc. Submitted documents

c: Requestor
(w/o enclosures)