



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2010

Ms. Destinee Waiters  
Assistant General Counsel  
Office of the General Counsel  
Houston Community College  
3100 Main Street  
Houston, Texas 77002

OR2010-15134

Dear Ms. Waiters:

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# 395774.

Houston Community College (the "college") received a request for e-mails sent between five named individuals and e-mails sent to or from a named individual that mention three others, during a specified period. You state that, upon payment from the requestor, you will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.111, 552.116, 552.135, and 552.137 of the Government Code.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

Initially, we must address the college's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence and rule 192.5 of the Texas Rules of Civil Procedure, this office has concluded that section 552.101 does not encompass discovery privileges. *See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).*

attorney general, not later than the fifteenth business day after the date of the 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 written 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 id.* § 552.301(e)(1)(A)-(D). You state the college received the request for information on July 15, 2010. Because you do not inform this office the college was closed for business any days between July 15, 2010 and August 5, 2010, we find the college's 10- and 15-business-day deadlines were July 29, 2010 and August 5, 2010, respectively. While you raised sections 552.101, 552.107, 552.111, 552.116, and 552.137 within the ten-business-day time period as required by subsection 552.301(b), the college did not raise section 552.135 until after the ten-business-day deadline had passed. Additionally, your brief containing arguments stating how the raised exceptions apply and the submitted information was submitted to this office in an envelope postmarked August 6, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Thus, the college failed to comply with the requirements mandated by subsections 552.301(b) and (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 that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.107, 552.111, and 552.116 of the Government Code as exceptions to disclosure of the information at issue, these exceptions are discretionary in nature. *See* Open Records Decisions Nos. 677 at 10 (attorney work-product privilege under section 552.111 or 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), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 630 at 4 (governmental body may waive attorney-client privilege, section 552.107(1)), 470 at 7 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). 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. Accordingly, the college may not withhold the information at issue pursuant to section 552.107, section 552.111, or section 552.116 of the Government Code. However, as sections 552.101, 552.135,

and 552.137 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider these exceptions for the submitted information. We also note the submitted information may contain information subject to section 552.117, which can provide a compelling reason for non-disclosure under section 552.302.<sup>2</sup>

You claim the e-mails submitted in Exhibit B are excepted under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 of the Government Code encompasses section 51.971 of the Education Code, which provides in part:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

(D) auditing.

...

(e) Information produced in a compliance program investigation the release of which would interfere with an ongoing compliance investigation is excepted from disclosure under Chapter 552, Government Code.

Educ. Code § 51.971(a), (e). Section 51.971 defines a compliance program as a process to assess and ensure compliance by officers and employees of an institution of higher education. *Id.* § 51.971(a)(1). You state the information in Exhibit B pertains to a complaint regarding a potential conflict of interest involving the college's board of trustees. You state the potential conflicts involved ethical standards of conduct as stated in both Chapter 176 of the Local Government Code and the college's board bylaws and policies. You represent that, in response to the complaint, the college's compliance program investigated potential conflicts of interest between trustees, certain executive administrators, and outside

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<sup>2</sup>The 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).

contractors. Based on your representations and our review, we agree that Exhibit B pertains to the college's compliance program for purposes of section 51.971. *See id.* § 51.971(a).

You seek to withhold the e-mails in Exhibit B in their entirety under section 51.971(e). This section requires (1) there be an ongoing compliance program investigation, and (2) release of the records at issue would interfere with such investigation. *Id.* § 51.971(e). You represent that the information in Exhibit B pertains to an ongoing compliance investigation being conducted by the college. You also state release of this information at this time would interfere with that investigation. Upon review, we agree the e-mails in Exhibit B pertain to the conflict of interest complaint and subsequent compliance investigation. Accordingly, based on your representations and our review, we conclude the college must withhold Exhibit B in its entirety under section 552.101 of the Government Code in conjunction with section 51.971(e) of the Education Code. As our ruling is dispositive for Exhibit B, we need not address your remaining argument against its disclosure.

A portion of the information in Exhibit C may be subject to section 552.117(a)(1) of the Government Code. This section excepts from public disclosure the present 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 timely request that such information be kept confidential under section 552.024 of the Government Code. 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 college may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information we marked in Exhibit C timely elected to keep her family member information confidential pursuant to section 552.024, the college must withhold this information under section 552.117(a)(1) of the Government Code. Otherwise, this information must be released.

The remaining information in Exhibit C contains private e-mail addresses subject to section 552.137 of the Government Code. 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). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue are not specifically excluded by section 552.137(c). Accordingly, the college must withhold the e-mail addresses you highlighted in pink, as well as the e-mail address we marked, from Exhibit C under section 552.137 of the Government Code, unless the owners of these e-mail addresses affirmatively consent to their disclosure.<sup>3</sup>

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<sup>3</sup>We 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 private e-mail addresses under section 552.137, without the necessity of requesting an attorney general decision.

In summary, the college must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 51.971(e) of the Education Code. If the individual whose information we marked in Exhibit C timely elected to keep her family member information confidential, the college must also withhold this information under section 552.117 of the Government Code. The college must withhold the e-mail addresses you highlighted in pink, as well as the e-mail address we marked, under section 552.137 of the Government Code, except to the extent any individuals have consented to their disclosure. The remaining information in Exhibit C 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](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,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/tp

Ref: ID# 395774

Enc. Submitted documents

c: Requestor  
(w/o enclosures)