



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 10, 2010

Ms. Ruth E. Shapiro
Assistant General Counsel
University of Houston System
E. Cullen Building, Suite 311
Houston, Texas 77204-2162

OR2010-18556

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# 402544.

The University of Houston System (the "system") received a request for all correspondence between the University of Houston and Rice University making reference to any licensed FM radio broadcast issue, license transfer, local marketing agreements, HD transmissions, translator or any related matter; all documents referring to a specified broadcast tower; and all documents relating to proposed programming on specified frequencies; and any document referring to KTRU-FM radio. Although you take no position with respect to the public availability of the submitted information, you state the submitted documents may contain proprietary information of third parties subject to exception under the Act. Accordingly, you state, and provide documentation showing, that the system notified Rice University; Dow Lohnes; Public Radio Capital; Satterfield & Perry, Inc.; Livingston Associates, L.L.C.; The Gerald A. Teel Company, Inc.; Michael Urban; Prejean & Co., Inc.; Charter Title Company; SKA Consulting, L.P.; Broadcast Site Management, LLC; and H.C. Jeffries Tower Company, Inc. of the request for information and of their rights 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) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

An interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have

not received any comments from any of the interested third parties explaining why any portion of the submitted information relating to them should not be released to the requestor. Thus, we have no basis to conclude that release of any portion of the submitted information would implicate the proprietary interests of these third parties. Accordingly, none of the submitted information may be withheld on the basis of these third parties' proprietary interests. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence 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).

We note a portion of the submitted information is protected by common-law privacy. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This exception encompasses common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public interest. Thus, the system must withhold this marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

The remaining information contains a utility account number. Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). We find the utility account number constitutes an access device number for purposes of section 552.136. Thus, the system must withhold the account number we have marked under section 552.136 of the Government Code.

Section 552.137 of the Government Code provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address

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

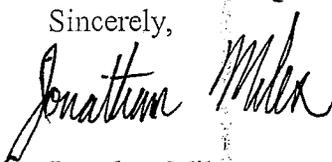
is specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). We have marked e-mail addresses that are not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the marked e-mail addresses must be withheld under section 552.137 of the Government Code, unless the owners consent to disclosure.²

In summary, the system must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The system must withhold the utility account number we have marked under section 552.136 of the Government Code. The system must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners consent to disclosure. 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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 402544

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Mr. Richard A. Zansitis
Vice President & General Counsel
Rice University
P.O. Box 1892
Houston, Texas 77251-1892
(w/o enclosures)

Mr. Marc Hand
Mr. Eric Langner
Public Radio Capital
834 Marshall Road
Boulder, Colorado 80305
(w/o enclosures)

Mr. Tom Livingston
Livingston Associates, LLC.
3000 Chestnut Avenue, Suite 208
Baltimore, Maryland 21211
(w/o enclosures)

Mr. Michael J. Urban
P.O. Box 890348
Houston, Texas 77289-0348
(w/o enclosures)

Mr. William S. Barnett
Vice President
Charter Title Company
777 Walker, Suite 2550
Houston, Texas 77002
(w/o enclosures)

Mr. George Schank
Broadcast Site Management, LLC
5591 Jernigan Drive
Conroe, Texas 77306
(w/o enclosures)

Ms. Margaret Miller
Northwest Suite 800
1200 New Hampshire Avenue
Washington, DC 20036-6802
(w/o enclosures)

Mr. Robert Austin
President
Satterfield & Perry, Inc.
7211 4th Avenue South
St. Petersburg, Florida 33707
(w/o enclosures)

Mr. Gerald Teel
The Gerald A. Teel Company, Inc.
974 Campbell Road, Suite 204
Houston, Texas 77024
(w/o enclosures)

Daniel E. Kersten
Prejean & Co., Inc.
9324 Westview
Houston, Texas 77055
(w/o enclosures)

Mr. Scott Leafe
Mr. Trent McDaniel
SKA Consulting, L.P.
1515 Witte Road, Suite 150
Houston, Texas 77080
(w/o enclosures)

Mr. H.C. Jeffries
H.C. Jeffries Tower Company, Inc.
24900 Ford Road
Porter, Texas 77365-5452
(w/o enclosures)