ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 15, 2010

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

OR2010-18843

Dear Ms. Angadicheril:

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# 403625 (OGC# 133758).

The University of Texas at Austin (the "university") received a request for thirty-four categories of information relating to two named individuals and the University Interscholastic League (the "UIL").[1] You state you will release some information to the requestor. You state the university does not have information responsive to fifteen categories of information.[2] You claim the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note portions of the submitted information consist of the minutes of a public meeting of the UIL. The minutes and agendas of a governmental body's public meetings are specifically made public under the Open Meetings Act, chapter 551 of the Government Code.

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[1]The UIL is a part of the university and serves as the governing body for extracurricular activities in Texas public schools.

[2]We note the Act does not require a governmental body to release information that did not exist at the time the request for information was received or create new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

See id. §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying upon request), .043 (notice of meeting of governmental body must be posted in a place readily accessible to general public at least 72 hours before scheduled time of meeting), .053-.054 (district governing bodies required to post notice of meeting at a place convenient to the public in administrative office of district). Although you assert these documents are excepted under sections 552.103 and 552.111 of the Government Code, as a general rule, the exceptions to disclosure found in the Act do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the minutes of the public meeting, which we have marked, must be released in accordance with section 551.022 of the Government Code.

Next, we note some of the submitted information is made expressly public under section 552.022 of the Government Code, which provides, in relevant part, as follows:

> (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:
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> > (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108 [and]
> >
> > . . .
> >
> > (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). The submitted information includes a completed report subject to section 552.022(a)(1) and information in accounts and vouchers relating to the receipt or expenditure of public funds subject to section 552.022(a)(3). Although the university raises sections 552.103 and 552.111 of the Government Code, these exceptions are discretionary in nature and thus may be waived. Accordingly, sections 552.103 and 552.111 do not constitute other law for purposes of section 552.022. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111) 473 (1987) (section 552.103 may be waived); *see also 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). Therefore, the university may not withhold the completed report and the information in accounts and vouchers under sections 552.103 and 552.111. However, because information subject to section 552.022 may be withheld under section 552.136 of the Government Code,

we will address this exception for the information subject to section 552.022.[3] We will also consider your arguments against disclosure of the information not subject to section 552.022.

First we address the information subject to section 552.022 of the Government Code. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of [the Act], 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 id.* § 552.136(a) (defining "access device"). Upon review, we find the university must withhold the credit card numbers we have marked under section 552.136 of the Government Code.[4]

Next, you raise section 552.103 of the Government Code for the information not subject to section 552.022. Section 552.103 of the Government Code provides:

> (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.
>
> . . .
>
> (c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Id. § 552.103(a), (c). The governmental body claiming this exception bears the burden of providing relevant facts and documents to demonstrate the applicability of the exception. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the governmental body received the request for information and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open

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

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

Records Decision No. 551 at 4 (1990). The university must meet both prongs of this test for information to be excepted under section 552.103(a).

You state, and provide documentation showing, that prior to the university's receipt of this public information request, a lawsuit styled *Southwest Officials Association, Inc. d/b/a Texas Association of Sports Officials v. Tony Timmons, as Director of the Sports Officials Program of the University Interscholastic League, and Charles Breithaupt, as Executive Director of the University Interscholastic League*, Cause No. D-1-GN-10-003159 was filed in the 126th District Court of Travis County.[5] We therefore agree the litigation was pending on the date the university received the request. You further inform us the subject of the lawsuit includes section 1204 of the UIL Constitution and Contest Rules. You also state the submitted information relates to this subject. Based on your representations and our review, we find the university has established the requested information relates to the pending litigation. Therefore, the university may withhold the information not subject to section 552.022 under section 552.103 of the Government Code. As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

We note, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Further, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No.350 (1982).

In summary, the university must release the minutes of the UIL's public meeting, which we have marked, in accordance with section 551.022 of the Government Code. The university must release the completed report and the information in accounts and vouchers subject to section 552.022 of the Government Code, which we have marked. In doing so, the university must withhold the credit card numbers we have marked under section 552.136 of the Government Code. The university may withhold the remaining information under section 552.103 of the Government Code.

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

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[5]You inform us, and provide documentation showing, the lawsuit has since been removed to the United States District Court for the Western District of Texas, Austin Division, and assigned Case No. 1:10-cv-00753.

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,

Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 403625

Enc. Submitted documents

c: Requestor
(w/o enclosures)