



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 19, 2011

Mr. Ronny H. Wall
Associate General Counsel
Texas Tech University System
P.O. Box 42021
Lubbock, Texas 79409-2021

OR2011-05454

Dear Mr. Wall:

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# 414980.

Angelo State University (the "university") received a request for all e-mails, documents, reports, and other correspondence related to a named professor's use of the raw data and other forms of data from the Texas School Survey of Drug and Alcohol Use from January 1, 2009 to the date of the request. You argue the submitted information is not subject to the Act. You also state release of the submitted information may implicate the interests of three third parties, the Alcohol and Drug Abuse Council for the Concho Valley ("ADACCV"), San Angelo Independent School District, and the Public Policy Research Institute of Texas A&M University. Thus, you state the university notified these third parties of the university's receipt of the request for information and of their right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

First, we address your assertion that the submitted information is not subject to the Act. Section 552.021 of the Government Code provides for public access to "public information,"

which is defined by section 552.002 of the Government Code as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988).

You state that the submitted information relates to the named professor's work as an unpaid, independent analyst for the ADACCV as part of ADACCV's participation in gathering raw data for inclusion in the Texas School Survey of Drug and Alcohol Abuse. In comments to our office, the requestor states that the professor works with ADACCV through the university's Community Development Initiatives program ("CDI"). In response to the requestor's comments, you explain that CDI is a university program that both leads projects for purposes of engaging university students in the community and also conducts projects at the behest of private entities in the community. You explain that CDI's work with ADACCV is the second type of project and that CDI assisted in the analysis and reporting of data. You also state that the professor named in the request is one of the managers of CDI. Upon review, we find the submitted information was used or created by the professor named in the request as part of his responsibilities to CDI, a university program. Accordingly, we conclude the submitted information was collected or maintained in connection with the transaction of university business. Therefore, the submitted information is public information subject to the Act under section 552.002 of the Government Code. Accordingly, the submitted information must be released unless it falls into the scope of an exception to disclosure. Gov't Code §§ 552.002, .021.

Next, we note 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 id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the submitted information should not be released. Thus, we have no basis for concluding any portion of the submitted information constitutes proprietary information of these parties, and the university may not withhold any portion of the submitted information based on the proprietary interests of the third parties. *See* 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.

We note the submitted information includes the e-mail address of a member of the public. 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).¹ *See* Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not specifically excluded by section 552.137(c). As such, the marked e-mail address must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release.² *See id.* § 552.137(b). As no exceptions to the disclosure of the remaining information have been raised, it 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,


Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 414980

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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).

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

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