



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

Mr. Brian S. Nelson
General Counsel
Lone Star College System
5000 Research Forest Drive
The Woodlands, Texas 77381-4356

OR2011-06456

Dear Mr. Nelson:

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# 417102 (LSCS File No. PR11-0216-00045).

The Lone Star College System (the "system") received a request for eight categories of information pertaining to two named individuals and two named companies. You state the system does not have information responsive to categories seven or eight of the request.¹ You also state you are releasing some of the responsive information to the requestor. You claim that portions of the submitted information are excepted from disclosure under sections 552.1235 and 552.137 of the Government Code. Additionally, although you make no arguments on the matter, you state that release of some of the submitted information may implicate the proprietary interests of a third party. Accordingly, you inform us, and provide documentation showing, that you notified the interested third party of the request and of its right to submit arguments to this office as to why their information should not be released. *See Gov't Code § 552.305(d)* (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

certain circumstances). We have considered the exceptions you claim and reviewed the submitted information, a portion of which is a representative sample.²

Initially, we note that 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) of the Government Code to submit its reasons, if any, as to why requested information relating to it 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 arguments from the third party. We, thus, have no basis for concluding that any portion of the submitted information constitutes the third party's proprietary 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. Accordingly, the system may not withhold Exhibit 2 based on the proprietary interests of the non-briefing third party. As you make no arguments against its disclosure, Exhibit 2 must be released.

Section 552.1235 of the Government Code excepts from disclosure "[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]" Gov't Code § 552.1235(a). "Institution of higher education" is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an "institution of higher education" as "any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section." *See* Educ. Code § 61.003. Because section 552.1235 does not provide a definition of "person," we look to the definition provided in the Code Construction Act. *See* Gov't Code § 311.005. "Person" includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

You seek to withhold portions of the remaining information under section 552.1235. You state the information you have marked pertains to individuals who are donors to an institution of higher education. Based upon your representations and our review, we agree portions of the information at issue, which we have marked, identify persons who are donors to the system. Accordingly, we conclude that the system must withhold the information we have marked under section 552.1235 of the Government Code. However, some of the individuals you have marked have been publicly identified as donors on the university's

²We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

website. Accordingly, the remaining information you have marked may not be withheld under section 552.1235 of the Government Code.

You claim e-mail addresses in the remaining information are excepted from public disclosure under 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 id.* § 552.137(a)-(c). Accordingly, the system must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their public disclosure.³

In summary, the system must withhold the information we have marked under section 552.1235 of the Government Code. The system must also withhold the information we have marked under section 552.137 of the Government Code, unless the owners of the addresses affirmatively consent to their public 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,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/eeg

³Open Records Decision No. 684 (2009) is a previous determination authorizing all governmental bodies to withhold ten categories of information, including a 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.

Ref: ID# 417102

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)