



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2011

Mr. R. Brooks Moore
Managing Counsel - Governance
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845

OR2011-10306

Dear Mr. Moore:

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# 425338 (SO-11-055).

The Texas A&M University System (the "system") received a request for all applications for the position of chancellor, which led to the hiring of a named individual, from a specified period of time. You indicate the system will withhold some of the responsive information under section 552.117 of the Government Code pursuant to section 552.024 of the Government Code.¹ You claim that portions of the submitted information are excepted from disclosure under section 552.123 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.123 of the Government Code excepts from required public disclosure:

The name of an applicant for the position of chief executive officer of an institution of higher education, and other information that would tend to identify the applicant . . . except that the governing body of the institution must give public notice of the name or names of the finalists being

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chose not to allow public access to the information. See Gov't Code § 552.024(c)(2).

considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person.

Act of May 29, 2011, 82nd Leg., R.S., S.B. 5, § 5.01 (to be codified as an amendment to Gov't Code § 552.123). Section 552.123 permits the withholding of *any* identifying information about the candidates, not just their names. Open Records Decision No. 540 (1990) (construing statutory predecessor to section 552.123). Examples of information identifying individuals might include, but are not limited to, resumes, professional qualifications, membership in professional organizations, dates of birth, current positions, publications, letters of recommendation, or any other information that can be uniquely associated with a particular applicant. *Id.* at 4. In addition, the exception protects the identities of all persons being considered for the position of university chief executive officer, whether they are nominated or apply on their own initiative. *Id.* at 5.

Texas A&M University is an "institution of higher education" as defined by section 61.003(8) of the Texas Education Code. Educ. Code § 61.003(8). You inform us the chancellor is the "chief executive officer" of the system. You state the submitted information contains the identifying information of candidates for the position of chancellor of Texas A&M University. Based on your representations and our review of the submitted information, we conclude that the system may withhold the information we have marked under section 552.123 of the Government Code. However, we find you have failed to demonstrate how the remaining information at issue identifies or tends to identify particular candidates. Thus, the system may not withhold the remaining information pursuant to section 552.123 of the Government Code.

We note the remaining information includes information that is excepted from disclosure under section 552.102(a) of the Government Code.² Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.137 of the Government Code provides, "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 is specifically excluded by subsection (c). Gov't Code § 552.137(a)-(c). The e-mail address we have marked is not of a type specifically excluded by section 552.137(c). Accordingly, you must

²The 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).

withhold the e-mail address we have marked under section 552.137, unless its owner has affirmatively consented to its disclosure.³

In summary, the system may withhold the information we have marked under section 552.123 of the Government Code. The system must withhold the information we marked under section 552.102(a) of the Government Code. The system must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless its owner has affirmatively consented to its 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/eb

Ref: ID# 425338

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We 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 an 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.