



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2011

Ms. Neera Chatterjee
Office of General Counsel
University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2011-13712

Dear Ms. Chatterjee:

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# 430661 (OGC# 138377).

The University of Texas System (the "university") received a request for the chancellor's schedule during a specified period. You indicate the university will redact certain information under section 552.024 of the Government Code.¹ You claim portions of the submitted information are not subject to the Act. You claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.102, 552.105, 552.107, 552.1175, 552.1235, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your assertion that some of the information is not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "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). You state the information you have marked relates to the chancellor's service on outside boards and various personal meetings. You explain his board service is not related to his role as the university's chancellor, and the information you have marked is not collected,

¹Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 of the Government Code without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to this information. *See* Gov't Code §§ 552.117, .024(c)(2).

assembled, or maintained in connection with the transaction of official university business. You state the use of university resources to create and maintain the marked information was *de minimis*. See Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Based on your representations and our review of the information, we conclude the information you have marked is not subject to the Act and the university need not release it in response to this request.²

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 51.951 of the Education Code, which provides:

(a) Information related to the location, purchase price, or sale price of real property purchased or sold by or for an institution of higher education, as defined by Section 61.003 [of the Education Code], is confidential and exempt from disclosure under Chapter 552, Government Code, until a deed for the property is executed. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, investigation conducted for the purpose of locating or determining the purchase or sale price of the property, or any report prepared in anticipation of purchasing or selling real property.

Educ. Code § 51.951. We understand that the university is an institution of higher education under section 61.003 of the Education Code. You state the name of the property you have marked reveals the location of a parcel the university seeks to acquire. You explain the transaction is still in negotiation, and a deed has not been executed. Based on your representations and our review, we agree the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.915 of the Education Code.³

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). Upon review, we agree the information you have marked must be withheld under section 552.102(a) of the Government Code.

²As our ruling is dispositive for this information, we do not address your arguments against its release.

³As our ruling is dispositive for this information, we do not address your argument under section 552.105 of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6–7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made “for the purpose of facilitating the rendition of professional legal services” to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Texas Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, lawyer representatives, and a lawyer representing another party in a pending action and concerning a matter of common interest therein. *See* TEX R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a confidential communication, *id.*, meaning it was “not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege, unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein). You state the information you have marked documents meetings in which the university’s attorneys provided legal advice to officials within the university. You have identified the parties who participated in the meetings. You explain the meetings were intended to be confidential and they have remained confidential. Based on your representations and our review, we find the information you have marked is protected by the attorney-client privilege, and the university may withhold it under section 552.107 of the Government Code.

Section 552.1175(b) of the Government Code provides:

Information that relates to the home address, home telephone number, emergency contact information, or social security number of [a peace officer as defined by article 2.12 of the Code of Criminal Procedure], or that reveals whether the individual has family members is confidential and may not be

disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 3 (to be codified as an amendment to Gov't Code § 552.1175(b)). Section 552.1175 also encompasses a peace officer's personal cellular telephone number if the peace officer pays for the cellular telephone service with his personal funds. To the extent the information you have marked relates to a peace officer as defined by article 2.12 of the Code of Criminal Procedure, the peace officer elects to restrict access to the information pertaining to him in accordance with section 552.1175(b), and the peace officer paid for the cellular service with personal funds, the university must withhold the information pertaining to that individual under section 552.1175 of the Government Code. If the individual to whom the marked information relates is not a peace officer as defined by article 2.12 of the Code of Criminal Procedure, does not elect to restrict access to the information, or did not pay for the cellular service with personal funds, then the university may not withhold the information pertaining to that individual under section 552.1175 of the Government Code.

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). For purposes of this exception, "institution of higher education" is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). As previously noted, we understand the university is an institution of higher education. Educ. Code § 61.003(8). 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 state the information you have marked identifies private donors to the university, an institution of higher education. Based on your representations and our review of the information, we agree the university must withhold the information you have marked under section 552.1235 of the Government Code.

Section 552.136(b) of the Government Code provides, "[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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). You state the teleconferencing phone numbers and access codes can be used in conjunction with one another to arrange long-distance telephone calls on the university's accounts. Based on this representation and

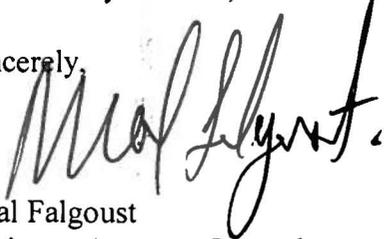
our review, we agree the university must withhold the information you have marked under section 552.136 of the Government Code.

In summary, the university need not release information that is not subject to the Act. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.951 of the Education Code. The university must withhold the information you have marked under section 552.102 of the Government Code. The university may withhold the information you have marked under section 552.107 of the Government Code. To the extent the information you have marked relates to a peace officer as defined by article 2.12 of the Code of Criminal Procedure, the peace officer elects to restrict access to the information pertaining to him in accordance with section 552.1175(b) of the Government Code, and the peace officer paid for the cellular service with personal funds, the university must withhold the information pertaining to that individual under section 552.1175 of the Government Code. The university must withhold the information you have marked under section 552.1235 of the Government Code and section 552.136 of the Government Code. 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

Ref: ID# 430661

Enc. Submitted documents

c: Requestor
(w/o enclosures)