



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 27, 2011

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

OR2011-15806

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# 434436 (OGC# 139065).

The University of Texas at Austin (the "university") received a request for all communications between all university employees within certain departments and several specified entities and individuals during a specified period. You state the university will redact e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to the ruling in Open Records Decision No. 684 (2009).<sup>1</sup> You claim the information submitted under Tab 6 is not subject to the Act. In the alternative, you claim this information is excepted from disclosure under section 552.101 of the Government Code. Although you take no position with respect to the public availability of the remaining requested information, a representative sample<sup>2</sup> of which you have submitted under Tab 7,

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<sup>1</sup>We note this office has issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consented to release, without the necessity of requesting an attorney general decision.

<sup>2</sup>We assume 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 those records contain substantially different types of information than those submitted to this office.

you state the proprietary interests of a third party might be implicated by this information and the information under Tab 6. Accordingly, you notified Dallas Cowboys Merchandising of the request and of its right to submit arguments to this office explaining why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered your arguments and reviewed the submitted information.

Initially, we address your contention that the information submitted under Tab 6 is not subject to the Act. 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 explain the information at issue consist of personal e-mails that have no connection with university business and represent incidental use of university e-mail by a university employee. After reviewing the information at issue, we agree the information submitted under Tab 6 does not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the university. *See id.* § 552.021; *see also* 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). Therefore, we agree the information submitted under Tab 6 is not subject to the Act, and the university need not release it in response to this request.

Next, you inform us that some of the information submitted under Tab 7 was responsive to a previous request for information, in response to which this office issued Open Records Letter No. 2011-13336 (2011). To the extent the information submitted under Tab 7 is identical to the information at issue in Open Records Letter No. 2011-13336, and there has been no change in the law, facts, or circumstances on which the previous ruling was based, we conclude the university must continue to rely on Open Records Letter No. 2011-13336 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). However, if any of the information submitted under Tab 7 is not identical to the information at issue in the previous ruling, then the university may not rely on Open Records Letter No. 2011-13336 as a previous determination for that information.

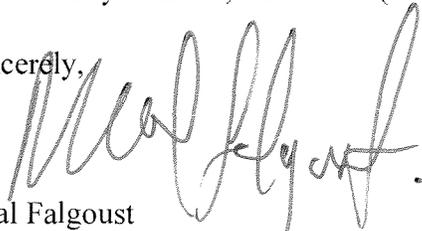
An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from Dallas Cowboys Merchandising. Thus, it has not demonstrated it has a protected proprietary interest in any of the information at issue. *See id.* § 552.110(a)–(b); 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 university may not withhold the information at issue on the basis of any proprietary interest Dallas Cowboys Merchandising may have in the information.

In summary, the information submitted under Tab 6 is not subject to the Act, and the university need not release it in response to this request. To the extent the information submitted under Tab 7 is identical to the information at issue in Open Records Letter No. 2011-13336, and there has been no change in the law, facts, or circumstances on which the previous ruling was based, the university must continue to rely on Open Records Letter No. 2011-13336 as a previous determination and withhold or release the information at issue in accordance with that ruling. The remaining information in Tab 7 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](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# 434436

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. Bill Priakos  
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Dallas Cowboys Merchandising  
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Irving, Texas 75063  
(w/o enclosures)