



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2011

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

OR2011-16008

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# 434984 (TAMU# 11-477).

The Texas A&M University (the "university") received a request for e-mails sent or received between two named university employees and twelve named individuals that include six specified terms over a specified time period. You state the university will release some of the requested information. Although you take no position as to whether the remaining information is excepted under the Act, you state release of the submitted information may implicate the proprietary interests of the Big 12 Conference (the "Big 12"). Accordingly, you state, and provide documentation showing, you notified the Big 12 of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have reviewed the submitted information.

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* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the Big 12 explaining why the submitted information should not be released. Therefore, we have no basis to conclude the Big 12 has a protected proprietary interest in the submitted 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 (1990). Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest the Big 12 may have in the information.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.¹ See Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)); Open Records Decision No. 622 (1994). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked the cellular telephone number of a university employee. If the university did not pay for the cellular telephone service at issue, and if the employee whose personal information is at issue made a timely election under section 552.024, the university must withhold the information we have marked under section 552.117(a)(1). If the university paid for the cellular telephone service at issue, or if the employee did not make a timely election under section 552.024, this information may not be withheld under section 552.117(a)(1).

We also note the submitted information contains e-mail addresses that are subject to 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). The e-mail addresses we have marked are not excluded by subsection (c). Therefore, the university must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented to their public disclosure.²

¹The 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).

²We note Open Records Decision No. 684 (2009) is 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.

In summary, if the university did not pay for the cellular telephone service at issue, and if the employee whose personal information is at issue made a timely election under section 552.024 of the Government Code, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners have affirmatively consented 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 434984

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Dan Beebe
Commissioner
Big Twelve Conference
400 East John Carpenter Freeway
Irving, Texas 75062
(w/o enclosures)