



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2011

Ms. Jessica L. Saldivar
Assistant General Counsel
Office of General Counsel
Houston Community College
3100 Main Street
Houston, Texas 77002

OR2011-16733

Dear Ms. Saldivar:

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# 435957.

Houston Community College (the "college") received a request for: (1) invoices submitted by two named individuals or a specified company during a specified time period; (2) copies of all checks paid to the two named individuals or the company during a specified time period; and (3) copies of any communications during a specified time period made between eight named college employees and two named individuals or the company regarding any real estate or similar transactions.¹ You state the college has released information responsive to items one and two of the request. You state the college does not possess responsive

¹You state the college sought and received clarification regarding item three of the request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

communications for five of the named college employees.² You claim that the remaining information requested in item three is excepted from disclosure under section 552.107 of the Government Code.³ We have considered the exception you claim and reviewed the submitted representative sample of information.⁴

Initially, we must address the college's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e-1) provides the following:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Gov't Code § 552.301(e-1). Pursuant to section 552.303 of the Government Code, we requested a copy of the letter the college provided to the requestor pursuant to section 552.301(e-1).⁵ Upon review, we find the submitted letter to the requestor demonstrates the college redacted portions of its discussion of the claimed exception, including information that does not disclose or contain the substance of the information

²The Act does not require a governmental body to release information that did not exist when it received a request or to create responsive information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

³Although you raise section 552.101 of the Government Code in conjunction with the attorney-client privilege encompassed by rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Furthermore, in this instance, the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107. *See* ORD 676 at 1-2.

⁴This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), 302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

⁵*See* Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

requested. Consequently, we find the college failed to comply with the requirements of section 552.301(e-1).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Although you raise section 552.107(1) of the Government Code, this section is discretionary in nature and thus may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege claimed under section 552.107(1) or Texas Rule of Evidence 503 may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.107(1) does not provide a compelling reason for non-disclosure. Therefore, the college may not withhold any of the information at issue on the basis of section 552.107(1). However, some of the submitted information may be information subject to section 552.137 of the Government Code, which can provide a compelling reason that overcomes the presumption of openness.⁶

Section 552.137 of the Government Code 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). Gov't Code § 552.137(a)-(c). Section 552.137 is not applicable to an e-mail address of a person who has a contractual relationship with a governmental body. *Id.* § 552.137(c)(1). Because we are unable to discern whether the e-mail address we have marked falls within the scope of section 552.137(c), we must rule conditionally. If the e-mail address belongs to a member of the public, the college must withhold the e-mail address we have marked under section 552.137, unless the owner of the address has affirmatively consented to its release.⁷ However, if the e-mail address belongs to an individual who has a contractual relationship

⁶The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁷We 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.

with the college, the e-mail address we have marked may not be withheld under section 552.137.

In summary, the college must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner has consented to its release or if the address belongs to an individual with a contractual relationship with the college. The college must release the remaining information.

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,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 435957

Enc. Submitted documents

c: Requestor
(w/o enclosures)