



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 15, 2011

Ms. Jessica L. Saldivar
Assistant General Counsel
Office of General Counsel
Houston Community College
P.O. Box 667517
Houston, Texas 77266-7517

OR2011-16801

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# 436151.

Houston Community College (the "college") received a request for the campaign finance reports for ten named individuals created around July 15, 2011. The college received a second request for all 2011 campaign financial disclosures of all candidates for the college's board of trustees. The college subsequently received a third request for all campaign finance reports for the college's board of trustees since July 2010. You state you have released some information to the requestors. You claim portions of the submitted information are excepted from disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted 2010 campaign finance reports are not responsive to the first and second requests because this information does not pertain to 2011 campaign finance information. This ruling does not address the public availability of non-responsive information, and the college need not release such information in response to the first and second requests.

Next, 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 requestors pursuant to section 552.301(e-1).¹ Upon review, we find the submitted letters to the requestors demonstrate the college redacted its discussion of the claimed exception, including information that does not disclose or contain the substance of the information 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). You raise section 552.117 of the Government Code, which can provide a compelling reason to withhold information. Therefore, we will consider the applicability of this exception to the submitted information.

We note the submitted information is subject to section 1.012 of the Election Code, which provides in relevant part as follows:

(a) Subject to Subsection (b), an election record that is public information shall be made available to the public during the regular business hours of the record's custodian.

...

(c) Except as provided by this code or Chapter 552, Government Code, all election records are public information.

¹See 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).

(d) In this code, "election record" includes:

...

(3) a certificate, application, notice, report, or other document or paper issued or received by government under this code.

Elec. Code § 1.012(a), (c), (d)(3). The submitted information consists of campaign contribution and finance reports filed under sections 254.031, 254.061 and 254.091 of the Election Code. *See* Act of June 29, 2011, 82nd Leg., 1st C.S., S.B. 1, § 76.03 (to be codified as an amendment to Elec. Code §254.031(a)); Act of May 26, 2011, 82nd Leg., R.S., H.B. 2359, § 4 (to be codified as an amendment to Elec. Code § 254.061); Elec. Code § 254.091. Therefore, under section 1.012(a) of the Election Code, the submitted campaign contribution and finance reports shall be made available to the public, except as provided by Chapter 552 of the Government Code. Accordingly, we will address your argument against disclosure of these reports.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former official or employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *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). Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or 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 information. Open Records Decision No. 530 at 5 (1989). However, section 552.117 applies only to records that a governmental body holds in an employment capacity. Open Record Decision Nos. 532 (1989) (stating purpose of predecessor statute of section 552.117 is to protect certain information during and after employment relationship). In this instance, you seek to withhold the personal information of current or former college board of trustee members. We note, however, the submitted information consists of election records the college is maintaining in accordance with the Election Code, not employment records. Therefore, the college may not withhold any portion of the submitted information under section 552.117(a)(1) of the Government Code. As you raise no further exceptions against disclosure of the submitted information, it 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,

A handwritten signature in cursive script that reads "Kirsten Brew".

Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 436151

Enc. Submitted documents

c: Requestor
(w/o enclosures)