



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2011

Mr. R. Brooks Moore  
Managing General Counsel  
Texas A&M University System  
301 Tarrow Street, Floor 6  
College Station, Texas 77840-7896

OR2011-18824

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# 440036 (SO-11-121).

The Texas A&M University System (the "system") received a request for five categories of information pertaining to Texas A&M University (the "university") applying to and joining the Southeastern Conference (the "SEC"). You claim some of the requested information is not subject to the Act. You also claim the remaining requested information is excepted from disclosure under sections 552.104 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-17297 (2011). We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon by this office in the prior ruling, the system must continue to rely on that ruling as a previous determination and withhold the

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<sup>1</sup>We assume the "representative sample" of information 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.

requested information in accordance with Open Records Letter No. 2011-17297. *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 that information is or is not excepted from disclosure). To the extent the requested information is not encompassed by Open Records Letter No. 2011-17297, we will address your arguments against its release.

You assert a portion of the information at issue is not subject to the Act. The Act applies to “public information,” which is defined in section 552.002 of the Government Code as:

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.

Gov’t Code § 552.002. Thus, virtually all of the information in a governmental body’s physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information a governmental body does not physically possess, if the information is collected, assembled, or maintained for the governmental body, and the governmental body owns the information or has a right of access to it. Gov’t Code § 552.002(a)(2); *see* Open Records Decision No. 462 at 4 (1987).

You inform us Exhibit B-2 consists of personal e-mails to or from personal e-mail accounts of members of the system’s board of regents that do not relate to the transaction of official system business. Based on your representations and our review, we agree Exhibit B-2 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 system. *See* Gov’t Code § 552.021. Therefore, this information is not subject to the Act, and the system need not release it in response to this request.

Section 552.104 of the Government Code protects from required public disclosure “information which, if released, would give advantage to competitors or bidders.” *Id.* § 552.104. The purpose of section 552.104 is to protect the purchasing interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not

except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990).

You state the university is negotiating its contractual relationships with the Big 12 Conference (the "Big 12") and the SEC, and these negotiations will not become final until the university leaves the Big 12 and enters the SEC. You assert release of the requested information at this stage would harm the university's negotiations with the Big 12 and the SEC. Based on your representations, we conclude the system may withhold Exhibit B-1 under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to public interest in the contract under negotiation). As we are able to make this determination, we need not address the remaining arguments against disclosure.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 440036

Enc. Submitted documents

c: Requestor  
(w/o enclosures)