



ATTORNEY GENERAL OF TEXAS

~~GREG ABBOTT~~

August 24, 2012

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

OR2012-13526

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# 463178 (OGC# 144575).

The University of Texas at Austin (the "university") received a request for e-mails to or from a named individual during a specified time period, personnel records for two named individuals, and records related to a specified investigation. You state you will release some information to the requestor. You claim some of the submitted information is not subject to the Act. In addition, you claim some of the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

We first address your contention the e-mails you have marked are not subject to the Act. The Act is applicable to "public information." *See* Gov't Code § 552.021. 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). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The Act also encompasses information that 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). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See* Gov't Code § 552.001(a).

You state the e-mails you have marked consist of personal e-mails that do not relate to the transaction of official university business. *See* 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). You further state these e-mails represent the employee's personal use of her university e-mail account under the university's electronic communications policy. Upon review of the submitted information, we agree the e-mails you have marked do 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* Gov't Code § 552.021. Thus, we conclude the e-mails you have marked are not subject to the Act, and need not be released in response to this request.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See id.* § 552.101. This section encompasses information protected by other statutes. Section 51.971 of the Education Code provides in relevant part the following:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

(D) auditing.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c)-(d). You inform us the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You inform us the remaining information consists of a completed compliance investigation that concluded in a determination the complaint was unsubstantiated or without merit. You state the investigation was undertaken by the university's Office of Institutional Compliance. You state the investigation was conducted in response to allegations against a university employee and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find this information relates to an investigation conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You state releasing the remaining information would directly or indirectly reveal the identity of those individuals making a complaint, seeking guidance from, or participating in a compliance program investigation, or alleged to have participated in the activities subject to the complaint. You inform us none of these individuals have consented to release of their information. Upon review, we agree release of the information we have marked would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation, or as alleged participants in the activities subject to the complaint. *See id.* § 51.971(c). Thus, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. Additionally, the university must generally withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code. However, we note the requestor is the spouse of the individual whose information is subject to section 51.971(c)(2). Thus, pursuant to section 51.971(d), we find the requestor may have a right of access to information pertaining

solely to his spouse. To the extent the requestor is not the authorized representative of his spouse, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code. To the extent the requestor is the authorized representative of his spouse, the university may not withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code. Additionally, none of the remaining information identifies an individual individuals making a complaint, seeking guidance from, or participating in a compliance program investigation, or alleged to have participated in the activities subject to the complaint for purposes of section 51.971 of the Education Code. Consequently, you have failed to show how any of the remaining information is confidential under section 51.971 of the Education Code, and it may not be withheld under section 552.101 of the Government Code on that basis.

We note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, social security number, emergency contact information, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.¹ See Gov't Code § 552.117(a)(1). We further note section 552.117 also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. 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. Therefore, if the individuals whose information we have marked timely requested confidentiality under section 552.024, the university must withhold the marked information under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. If the individuals whose information is at issue did not make timely elections under section 552.024 or the marked cellular telephone numbers are paid for by a governmental body, the university may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

In summary, the e-mails you have marked are not subject to the Act, and need not be released in response to this request. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of

¹The 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).

the Education Code. To the extent the requestor is not the authorized representative of his spouse, the university must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(2) of the Education Code. If the individuals whose information we have marked timely requested confidentiality under section 552.024 of the Government Code, the university must withhold the marked information under section 552.117(a)(1) of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The university 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,



Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/tch

Ref: ID# 463178

Enc. Submitted documents

c: Requestor
(w/o enclosures)