



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2012

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

OR2012-19055A

Dear Ms. Angadicheril:

This office issued Open Records Letter No. 2012-19055 (2012) on November 28, 2012. We have examined this ruling and determined Open Records Letter No. 2012-19055 is incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the correct ruling and is a substitute for Open Records Letter No. 2012-19055. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act"))).

You ask whether certain information is subject to required public disclosure under the Act, chapter 552 of the Government Code. Your request was assigned ID# 479227.

The University of Texas at Austin (the "university") received a request for all documents regarding persons attending university football games as a guest of the university president or The University of Texas System (the "system") chancellor. You state the university has redacted, to the extent it exists, student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

section 552.1235 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to the specified time period. This ruling does not address the public availability of non-responsive information, and the university is not required to release non-responsive information in response to this request.

Next, you acknowledge, and we agree, the university did not comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision. *See id.* § 552.301(b), (e). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See 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); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because the university's claim under section 552.1235 of the Government Code can provide a compelling reason for non-disclosure under section 552.302, we will address your argument under that exception.

Section 552.1235 of the Government Code excepts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). “Institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “[i]nstitution of higher education” as “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” *See* Educ. Code § 61.003.

You state the information you have marked identifies individuals who are donors to the university. Based on your representations and our review, we agree portions of the information at issue identify persons who are donors to the university. Accordingly, the university must withhold this information, which we have marked, under section 552.1235 of the Government Code. However, we find you have failed to demonstrate how any of the remaining responsive information you seek to withhold identifies the individuals at issue in

²We assume the “representative sample” of records 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 that submitted to this office.

their actual capacities as donors to the system for purposes of section 552.1235. Additionally, we note that one of the remaining individuals you have marked has professorships named after him and is otherwise publicly recognized as a donor on the internet. Accordingly, we conclude the remaining responsive information you have marked may not be withheld under section 552.1235 of the Government Code.

We note portions of the remaining responsive information are subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to cellular telephone numbers, provided the cellular telephone service or pager service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and 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). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the information we have marked must be withheld under section 552.117(a)(1) of the Government Code, including the personal cellular telephone number if the individual pays for the cellular telephone service with his personal funds. The university may not withhold the marked information under section 552.117 if the individuals did not make a timely election to keep the information confidential.

In summary, the university must withhold the information we have marked under section 552.1235 of the Government Code. The university must withhold the information we have marked under section 552.117 of the Government Code if the individuals whose information is at issue timely requested confidentiality and the cellular telephone service is not paid for by a governmental body. The university must release the remaining responsive 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.

³The 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).

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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/dls

Ref: ID# 479227

Enc. Submitted documents

c: Requestor
(w/o enclosures)