



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2012

Ms. Carol A. Longoria  
Office of the General Counsel  
The University of Texas at Austin  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2012-20347

Dear Ms. Longoria:

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# 472974 (ORR Nos. 146536 & 146537).

The University of Texas at Austin (the "university") received a request for all records and communications regarding a specified emergency situation, including e-mails, and telephone messages; policies and protocols about emergency situations, including minutes and agendas of meetings discussing such policies and protocols during a specified time period; and information to be released to the public regarding the specified situation. A second request from a different requestor seeks all communications during a specified time period involving university administrators and concerning the same emergency situation. You state the university is withholding e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> You state the university will release some of the requested information. You claim some of the submitted information is not subject to the Act. You claim some of the remaining submitted information is excepted from disclosure under sections 552.101, 552.108, 552.111, 552.117,

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<sup>1</sup>Open Records Decision No. 684 (2009) is 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.

and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you note, and we agree, the second request for information is narrower than the first request. Thus, you state the information submitted as Tab 9 responsive to the first request is not responsive to the second request. Accordingly, the university need not release information to the second requestor that is not responsive to his request.

Next, we address your argument that some of the submitted information does not consist of public information subject to the Act. The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides, "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). You inform us some of the information you have marked in Tab 6 is not subject to the Act because it is purely personal in nature and does not pertain to the public business of the university. After reviewing the personal information at issue, we agree this information 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 university. See *id.* § 552.021; see also 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 assert the University of Texas Electronic Identification Numbers ("UTEIDs") you have marked in Tab 6 are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform us the UTEIDs are used solely to access the university's computer mainframe and have no significance other than their use as tools for the maintenance, manipulation, or protection of public information. Upon review, we agree the marked UTEIDs do not constitute public information under the Act. Therefore, we conclude the personal information and the UTEIDs you marked in Tab 6 need not be released in response to this request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You raise section 552.101 in conjunction with section 418.177 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code, which was added to chapter 418 as part of the HSA. Section 418.177 makes certain information related to terrorism confidential, and provides as follows:

Information is confidential if the information

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may generally be related to emergency preparedness does not make the information *per se* confidential under the provisions of the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). As with any confidentiality statute, a governmental body asserting one of these sections must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You assert the information submitted as Tab 8, which consists of communications pertaining to the university's response to an act of terrorism or related criminal activity, is confidential under section 418.177 of the Government Code. You state the information at issue relates to the university's development of a system-wide security plan to assess campus-wide vulnerabilities. You explain the information at issue outlines recommendations to be used by the university to build on existing security initiatives and to proactively plan for emergency events such as the specified emergency situation. You inform us the information relates to the university's master risk assessment plans and recommends particular actions that should be taken to minimize risk. You argue release of this information would reveal the details of the university's plan and would allow the university's vulnerabilities to be exploited by those seeking to harm the university. Upon review, we find you have demonstrated the information submitted as Tab 8 was collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity and relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. Therefore, the university must withhold Tab 8 under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code.<sup>2</sup>

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the

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<sup>2</sup>As our ruling is dispositive for this information, we need not address your remaining argument under section 552.111 of the Government Code against its disclosure.

public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. See *id.* at 681-82. The type of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 455 (1987) (information pertaining to prescription drugs, specific illnesses, operations and procedures, and physical disabilities protected from disclosure), 422 (1984), 343 (1982). Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the university must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.

You claim section 552.108 of the Government Code for portions of Tab 9, which you marked. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why this exception is applicable to the information at issue. See *id.* §§ 552.108(a)(1), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us the information at issue is maintained by the university’s police department (the department”). You state the department is a law enforcement agency established pursuant to section 51.203 of the Education Code. You inform us the department and the Federal Bureau of Investigation are coordinating a nation-wide investigation into the matter at issue and release of the marked information would jeopardize the progress of the investigation. Thus, you state the information at issue pertains to an open and pending investigation. Based upon your representations, we conclude release of the information you have marked will interfere with the detection, investigation, or prosecution of crime. See *Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we find the university may withhold the information you have marked in Tab 9 under section 552.108(a)(1) of the Government Code.<sup>3</sup>

Section 552.111 of the Government Code excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” Gov’t Code § 552.111. This exception encompasses the deliberative

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument under section 552.108(b)(1) of the Government Code against disclosure of the information at issue.

process privilege. *See* Open Records Decision No. 615 at 2 (1993). The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990).

In Open Records Decision No. 615, this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ). We determined section 552.111 excepts from disclosure only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See* ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; *see also City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (section 552.111 not applicable to personnel-related communications that did not involve policymaking). A governmental body's policymaking functions do include administrative and personnel matters of broad scope that affect the governmental body's policy mission. *See* Open Records Decision No. 631 at 3 (1995).

Further, section 552.111 does not protect facts and written observations of facts and events that are severable from advice, opinions, and recommendations. *Arlington Indep. Sch. Dist. v. Tex. Attorney Gen.*, 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.); *see* ORD 615 at 5. But if factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make severance of the factual data impractical, the factual information also may be withheld under section 552.111. *See* Open Records Decision No. 313 at 3 (1982).

Section 552.111 can also encompass communications between a governmental body and a third party, including a consultant or other party with a privity of interest. *See* Open Records Decision No. 561 at 9 (1990) (section 552.111 encompasses communications with party with which governmental body has privity of interest or common deliberative process). For section 552.111 to apply, the governmental body must identify the third party and explain the nature of its relationship with the governmental body. Section 552.111 is not applicable to a communication between the governmental body and a third party unless the governmental body establishes it has a privity of interest or common deliberative process with the third party. *See* ORD 561.

You state the information submitted as Tab 7 consists of sensitive internal discussions concerning the university's response to an emergency situation that occurred at the university and resulting personnel matters of broad scope. You explain this information is reflective of the deliberative process by which the university handles such an event, including the corresponding media attention. Thus, you state the information at issue consists of advice,

opinions, and recommendations of the university pertaining to the policymaking functions of the university. Based on your representations and our review of the information at issue, we find the university has demonstrated portions of the information at issue, which we have marked, consist of advice, opinions, or recommendations on the policymaking matters of the university. Thus, the university may withhold the information we marked in Tab 7 under section 552.111 of the Government Code. Upon review, however, we find the remaining information at issue is general administrative and purely factual information or does not pertain to policymaking. Further, some of the information consists of communications with individuals, including members of the media, with whom you have not demonstrated the university shares a privity of interest. Thus, we find you have failed to show how the remaining information at issue consists of advice, opinions, or recommendations on the policymaking matters of the university. Accordingly, the remaining information in Tab 7 may not be withheld under section 552.111 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(a)(1)*. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the university must withhold the information we have marked 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. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the university may not withhold the information we marked under section 552.117(a)(1).<sup>4</sup>

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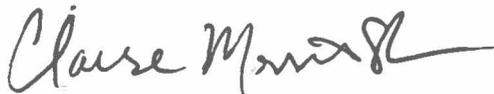
<sup>4</sup>Regardless of the applicability of section 552.117 of the Government Code, we note section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See Gov't Code § 552.147(b)*.

In summary, the information you marked in Tab 6 is not subject to the Act and need not be released in response to this request. The university must withhold Tab 8 under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university may withhold the information you marked in Tab 9 under section 552.108(a)(1) of the Government Code. The university may withhold the information we marked in Tab 7 under section 552.111 of the Government Code. The university must withhold the information we marked 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; however, information that is not responsive to the second request need not be released to the second requestor.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 472954

Enc. Submitted documents

c: 2 Requestors  
(w/o enclosures)