



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2013

Ms. Jennifer E. Bloom
Senior Assistant General Counsel
Office of the General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2013-06416

Dear Ms. Bloom:

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# 484483.

The University of Houston (the "university") received a request for the requestor's personnel file and all information pertaining to an investigation involving the requestor. You state the university has released the requestor's personnel file to her. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code and privileged under Texas Rules of Civil Procedure 190 and 202 and rules 26(d) and 27(a) of the Federal Rules of Civil Procedure. We have considered your arguments and reviewed the submitted information.

Initially, you state the university sought clarification of some of the information requested. *See Gov't Code § 552.222* (providing that if request for information is unclear, governmental body may ask requestor to clarify request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). You state the university has not yet received clarification from the requestor. We note a governmental body has a duty to make a good-faith effort to relate a

request for information to information the governmental body holds. Open Records Decision No. 561 (1990). In this case, as you state you have released information responsive to this portion of the request, we assume the university has acted in good-faith effort and released information related to the request for information.

Next, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). In this instance, you have submitted redacted and unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records.² We will, however, address the applicability of the university's arguments for this information.

We next note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless it is excepted by section 552.108 of the Government Code or "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation of a complaint. This information is subject to section 552.022(a)(1) and must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. You do not claim section 552.108. Although you assert this information is excepted from disclosure under section 552.103, this section is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the university may not withhold the submitted information under section 552.103. In addition, the courts have not found the Federal Rules of Civil Procedure to be "other law"

¹A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²In the future, if the university does obtain parental or an adult student's consent to submit unredacted education records and the university seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

for the purposes of section 552.022. Therefore, the university may not withhold the submitted information under either rule 26(d) or rule 27(a) of the Federal Rules of Civil Procedure. However, the Texas Supreme Court has held the Texas Rules of Civil Procedure are "other law" within the meaning of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Accordingly, we will consider your assertion of rules 190 and 202 of the Texas Rule of Civil Procedure. Additionally, we note portions of the submitted information are subject to sections 552.117 and 552.137 of the Government Code, which make information confidential under the Act.³ Therefore, we will address the applicability of sections 552.117 and 552.137 to the submitted information.

Although you assert the submitted information is excepted from disclosure pursuant to rules 190 and 202 of the Texas Rules of Civil Procedure, we note rule 190 merely provides for discovery limitations and rule 202 merely provides for deposition procedures. Neither rule makes information confidential for purposes of the Act. *See* TEX. R. CIV. P. 190, 202; *see also* Open Records Decision Nos. 658 at 4 (1998), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public). Therefore, the university may not withhold any of the submitted information on the basis of either rule 190 or rule 202 of the Texas Rules of Civil Procedure.

Section 552.117(a)(1) of the Government Code 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). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the university may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). The submitted information contains personal information of university employees and a former employee. To the extent these individuals timely elected to keep such information confidential under section 552.024, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the university may only withhold the cellular telephone

³The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470(1987).

numbers we marked if the cellular telephone services are paid for with personal funds. If the individuals at issue did not make timely elections under section 552.024, the university may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the owner of the e-mail address consents to its release or the e-mail address falls within the scope of section 552.137(c). *See* Gov’t Code § 552.137(a)-(c). The university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their public disclosure.

In summary, to the extent the individuals whose information we have marked timely elected to keep such information confidential 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 university may only withhold the cellular telephone numbers we marked if the cellular telephone services are paid for with personal funds. The university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their public disclosure. The remaining information 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 484483

Enc. Submitted documents

c: Requestor
(w/o enclosures)

