



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 26, 2013

Ms. Neera Chatterjee  
Public Information Coordinator  
The University of Texas System  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2013-14911

Dear Ms. Chatterjee:

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# 497598 (OGC# 150357).

The University of Texas at Austin ("UT-Austin") received a request for e-mails, documents, notes, and memoranda from the Office of the President regarding UT-Austin, UT-Austin's law school (the "law school"), the law school foundation (the "foundation"), or University of Texas System (the "UT System") Board of Regents sent to or from specified individuals during a specified time period. You indicate UT-Austin is releasing some information. You state UT-Austin has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> Further, you state UT-Austin will redact personal e-mail addresses under section 552.137 of the

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<sup>1</sup>The 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>.

Government Code in accordance with Open Records Letter No. 684 (2009).<sup>2</sup> You claim some of the submitted information is not subject to the Act. You also claim the submitted information is excepted from disclosure under sections 552.101, 552.106, 552.107, 552.111, 552.116, and 552.1235 of the Government Code. Further, you state, and provide documentation showing, you have notified third parties of the request and their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>3</sup> We have also received comments from the Secretary of the Senate of the State of Texas and the foundation.

Initially, UT-Austin has submitted to this office a letter to UT-Austin from the Texas House of Representatives Select Committee on Transparency in State Agency Operations (the "committee") asking that documents relating to the requestor, including documents related to open records requests made by the requestor, be preserved by UT-Austin. You note the committee requests "that no action be taken by . . . [UT-Austin] that would directly affect . . . access to a document." We note section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. This office is required by the Act to issue an open records ruling within a statutorily prescribed period after receiving a request for a ruling from a governmental body. *See id.* § 552.306(a) (requiring attorney general to "promptly render a decision requested under [the Act], consistent with the standards of due process, determining whether the requested information is within one of the exceptions of [the Act]"). You have not submitted arguments explaining, and we cannot discern, how the committee's letter impacts this office's obligations to comply with the Act by issuing a ruling. Furthermore, the committee's letter does not make the requested information confidential or otherwise except the requested information from disclosure under the Act. Providing a requestor with copies of documents requested under the Act does not in any way impact the preservation of the produced documents. Nor would production of information under the Act in this instance somehow interfere with the committee's access to the same information. Accordingly, the committee's letter has no bearing on this open records ruling and we will address the submitted arguments against disclosure.

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<sup>2</sup>Open Records Decision No. 684 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684.

<sup>3</sup>We 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 that those records contain substantially different types of information than that submitted to this office.

Next, we note the purpose of the Act is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body is not acting as a member of the public in doing so. *Id.* In such a case, the Act is not implicated, and the governmental body must determine, based on its own policies and procedures, whether the requesting official may access the requested information. Generally, a governmental body's decision to allow information to be circulated within the governmental body would not constitute a release to the public. Thus, internal circulation of information generally will not violate confidentiality protections or waive exceptions to public disclosure.<sup>4</sup> In sum, when a governmental official is acting in his official capacity, the Act does not control the official's right of access to information maintained by the governmental body. *See id.* at 3 (member of community college district board of trustees, acting in official capacity, has an inherent right of access to information maintained by district).

In this instance, the requestor indicates he is requesting information as a member of UT System's Board of Regents. The request, however, is printed using personal letterhead and explicitly invokes the Act. UT-Austin indicates it has interpreted the request as an attempt by the requestor to obtain the information in his capacity as a private citizen. We cannot resolve any factual dispute that may exist regarding the requestor's intent. Accordingly, we rule conditionally on this matter. In the event the requestor is acting in his official capacity, we find the present request is not a request by a member of the public under the Act, and we determine that UT-Austin may not withhold the requested information from the requestor pursuant to the Act's exceptions to required public disclosure. *See id.*; *see also id.* JC-120 at 5 (1999) (governmental body may adopt procedure for review of certified agenda or tape recording of closed meeting, but may not absolutely prohibit review by member, even if member did not attend meeting). The internal procedures of the UT System and UT-Austin for releasing information to UT System officials govern whether a member of the Board of Regents, acting in his official capacity, may access information held by UT-Austin. This office cannot resolve an internal dispute about document-management policy that may exist within the UT System.

In the event, however, the requestor is making the present request in his personal capacity as a member of the public, the request falls under the Act, and UT-Austin is entitled by the Act to withhold from the requestor both confidential information and information excepted

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<sup>4</sup>Particular confidentiality provisions in the law may contain restrictions on internal circulation of confidential information. When such provisions apply, a governmental body should ensure its internal procedures comply with any such restrictions.

from disclosure by the Act. Accordingly, we will address the arguments raised against disclosure.<sup>5</sup>

Next, we note some of the submitted information, which we have marked, is not responsive because it was created after the request for information was received or was not sent to or received by any of the specified individuals. This ruling does not address the public availability of information that is not responsive to the request, and UT-Austin is not required to release non-responsive information.

Next, you and the foundation contend some of the responsive information is not subject to the Act. The Act is applicable only to "public information." *See* Gov't Code §§ 552.002, .021. Section 552.002(a) defines "public information" as consisting 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 the information in a governmental body's physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information is subject to the Act even if a governmental body does not physically possess it as long as it 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). Thus, information collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* ORD 462; *cf.* Open Records Decision No. 499 (1988). You inform us some of the information you have marked consists of personal e-mails that have no connection with UT-Austin's business and constitute incidental use of e-mail by UT-Austin employees. You also inform us this information was not collected or assembled and is not maintained pursuant to any law or ordinance or in connection with the transaction of UT-Austin's business. You state UT-Austin's policy allows for incidental use of e-mail by employees and officials. Based on your representations and our review of the information at issue, we find this information does not constitute public information for purposes of section 552.002 of the Government Code. *See* Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee

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<sup>5</sup>If the request at issue was made by a member of the Board of Regents acting in his official capacity, the remainder of this ruling is not relevant to the requestor's right of access to the information.

involving *de minimis* use of state resources). Therefore, we conclude the e-mails at issue, which you have marked, are not subject to the Act and need not be released in response to the present request for information.

The foundation argues a portion of the remaining requested information is not subject to public disclosure under the Act because the foundation is a private, non-governmental organization that exists and operates independently of UT-Austin. We note UT-Austin has marked only one letter as information the foundation may brief to this office and object to its release. Additionally, we note the information at issue consists of correspondence between UT-Austin and other parties that was sent to UT-Austin and is in the possession of UT-Austin. Furthermore, this information was collected, assembled, or maintained in connection with the transaction of UT-Austin's official business, and UT-Austin has submitted this information as being subject to the Act. Thus, we conclude the information at issue is subject to the Act and must be released unless it is demonstrated the information falls within an exception to public disclosure under the Act. See Gov't Code §§ 552.006, .021.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "for the purpose of facilitating the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies to only communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies to only a confidential communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the intent of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover,

because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

You state the information you have marked are documents created and communicated by attorneys for UT System and its institutions to provide legal advice to clients seeking legal advice within the course and scope of the parties' employment or official capacity. You also state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find UT-Austin may withhold the information you have marked under section 552.107(1) of the Government Code.

Section 552.106 of the Government Code excepts from disclosure "[a] draft or working paper involved in the preparation of proposed legislation[.]" Gov't Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See Open Records Decision No. 460 at 1 (1987)*. The purpose of this exception is to encourage frank discussion on policy matters between the subordinates or advisors of a legislative body and the members of the legislative body. *Id.* at 2. Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* Section 552.106 does not protect purely factual information from public disclosure. *See id.* at 2; *see also Open Records Decision No. 344 at 3-4 (1982)* (for purposes of statutory predecessor, factual information prepared by State Property Tax Board did not reflect policy judgments, recommendations, or proposals concerning drafting of legislation). However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. *See ORD 460 at 2.*

You assert some of the remaining information, which you have marked, "contains communications regarding legislation and other working drafts of legislation [UT-Austin] prepared in response to legislative inquiries." Upon review, we find the information you have marked under section 552.106 constitutes advice, opinion, analysis, and recommendations for the purposes of section 552.106. Accordingly, UT-Austin may withhold the information you have marked under section 552.106 of the Government Code.<sup>6</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>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 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).

This office has also concluded a preliminary draft of a document intended for public release in its final form necessarily represents the drafter's advice, opinion, and recommendation with regard to the form and content of the final document, so as to be excepted from disclosure under section 552.111. *See* Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. *See id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. *See id.* at 2.

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 seek to withhold some of the remaining information under section 552.111 of the Government Code. You state the remaining information at issue consists of advice, opinions, and recommendations of employees and officials of UT-Austin. You further state the documents you have marked consist of draft documents that were intended to be released in their final form. Upon review, we find UT-Austin may withhold the information we have marked under section 552.111 of the Government Code. However, we find the remaining information at issue either consists of information that is administrative or purely factual in nature or was communicated with individuals with whom you have not demonstrated UT-Austin shares a privity of interest or common deliberative process. Accordingly, UT-Austin may not withhold any portion of the remaining information at issue under section 552.111 of the Government Code.

Section 552.116 of the Government Code provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure under the Act]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [required public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You state UT-Austin is an institution of higher education as defined by section 61.003 of the Education Code. You contend the information you have marked under section 552.116 was created in furtherance of an internal audit conducted by UT-Austin in conjunction with the State Auditor's Office. You inform us audits such as this are authorized by the Texas Internal Auditing Act, chapter 2102 of the Texas Government Code. *See id.* §§ 2102.003 (defining types of audits), .005 (requiring state agencies to conduct internal audits), .007 (relating to duties of internal auditor). Based on your representations and our review, we agree the information at issue consists of audit working papers as defined in section 552.116(b)(2). Accordingly, UT-Austin may withhold the information you have marked under section 552.116 of the Government Code.<sup>7</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This exception encompasses information other statutes make confidential, such as section 51.971 of the Education Code, which provides, in part:

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(e)(1). Section 51.971 defines a compliance program as "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[.]" *Id.* § 51.971(a)(1). We note UT-Austin is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You assert a portion of the remaining information pertains to an external compliance investigation conducted by the Office of the Attorney General on behalf of UT-Austin. You state the investigation relates to the management of money provided for the support of UT-Austin's law school through the foundation. Based on your representations and our review, we agree the information at issue pertains to

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<sup>7</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

UT-Austin's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You inform this office the information at issue pertains to an ongoing compliance investigation and release of the information at this time would interfere with, and potentially compromise, that investigation. Accordingly, we conclude UT-Austin must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

You seek to withhold the identifying information of applicants to UT-Austin contained in the information you have indicated. Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy, which protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *see also* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *see also* ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985); *see also* ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). You contend the information you have indicated is confidential under constitutional privacy. Upon review, we find the information at issue falls within the zones of privacy. Accordingly, UT-Austin must withhold the identifying information of applicants to UT-Austin contained in the information you have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy.<sup>8</sup>

Section 552.101 of the Government Code also encompasses the doctrine of 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 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, UT-Austin must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find none of the remaining

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<sup>8</sup>As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

information you have marked is both highly intimate or embarrassing and of no legitimate public concern. Thus, none of the remaining information at issue may be withheld under section 552.101 on the basis of common-law privacy.

You state UT-Austin will redact information under section 552.117 of the Government Code, as permitted by section 552.024(c) of the Government Code.<sup>9</sup> We note the remaining information contains information that also may be subject to section 552.117 of the Government Code. 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117(a)(1) 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 by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). 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, the 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 on which the request for this information was made. Therefore, to the extent the individuals at issue timely requested confidentiality under section 552.024, UT-Austin must withhold the cellular telephone number you have marked and the additional cellular telephone numbers we have marked in the remaining information under section 552.117(a)(1) of the Government Code, if the cellular telephone services are not paid for by a governmental body.

Section 552.1235 of the Government Code excepts from disclosure “the 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). For purposes of this exception, “institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as meaning “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.” Educ. Code § 61.003(8). Because section 552.1235 does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See* Gov't Code § 311.005. “Person” includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2).

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<sup>9</sup>Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 of the Government Code without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.117, .024(c).

You inform us some of the remaining information at issue identifies donors to the UT System or its component institutions who have not given permission to release their names or other identifying information. Upon review, we find UT-Austin must withhold the information we have marked under section 552.1235 of the Government Code. However, we note some of the remaining individuals at issue are either not identified as donors in the documents at issue or are identified as a "potential donor." Further, we note the remaining individuals at issue are publicly identified as donors on the website of the institutions at issue. Thus, release of the information at issue will not "disclose the identity" of the donor because the identities of these donors are already publicly known. Accordingly, we conclude UT-Austin may not withhold any of the remaining information at issue under section 552.1235 of the Government Code.

In summary, in the event the requestor is requesting the responsive information in his official capacity, we find the present request is not a request by a member of the public under the Act, and UT-Austin may not withhold the requested information from the requestor pursuant to the Act's exceptions to required public disclosure. Internal UT System and UT-Austin policies regarding access by members of the Board of Regents to information, not the rulings of this office, govern a request for information made to UT-Austin by a member of the Board of Regents acting in his official capacity. In the event the requestor is requesting the information in his personal capacity, we find UT-Austin may withhold (1) the information you have marked under section 552.107 of the Government Code, (2) the information you have marked under section 552.106 of the Government Code, (3) the information we have marked under section 552.111 of the Government Code, and (4) the information you have marked under section 552.116 of the Government Code. UT-Austin must withhold (1) the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(e) of the Education Code, (2) the identifying information of applicants to UT-Austin in the information you have indicated under section 552.101 of the Government Code in conjunction with constitutional privacy, and (3) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024, UT-Austin must withhold the cellular telephone number you have marked and the additional cellular telephone numbers we have marked in the remaining information under section 552.117(a)(1) of the Government Code, if the cellular telephone services are not paid for by a governmental body. UT-Austin must withhold the information we have marked under section 552.1235 of the Government Code. The remaining responsive 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Kathleen J. Santos  
Assistant Attorney General  
Open Records Division

KJS/som

Ref: ID# 497598

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

The Honorable Brian Birdwell  
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The Honorable Donna Campbell  
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The Honorable John Carona  
Texas Senate  
Capitol Station, Room 4E.2  
P.O. Box 12068  
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(w/o enclosures)

The Honorable Wendy Davis  
Texas Senate  
Capitol Station, Room 3E.12  
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The Honorable Bob Deuell  
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The Honorable Rodney Ellis  
Texas Senate  
Capitol Station, Room 3E.6  
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Austin, Texas 78711  
(w/o enclosures)

The Honorable Craig Estes  
Texas Senate  
Capitol Station, Room 1E.9  
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(w/o enclosures)

The Honorable Kelly Hancock  
Texas Senate  
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The Honorable Juan "Chuy" Hinojosa  
Texas Senate  
Capitol Station, Room 3E.10  
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The Honorable Eddie Lucio  
Texas Senate  
Capitol Station, Room CAP 3S.5  
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The Honorable Robert Duncan  
Texas Senate  
Capitol Station, Room 3E.10  
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(w/o enclosures)

The Honorable Kevin Eltife  
Texas Senate  
Capitol Station, Room 3E.16  
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The Honorable Troy Fraser  
Texas Senate  
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The Honorable Glenn Hegar  
Texas Senate  
Capitol Station, Room E1.806  
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The Honorable Joan Huffman  
Texas Senate  
Capitol Station, Room 3E.2  
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Austin, Texas 78711  
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The Honorable Jane Nelson  
Texas Senate  
Capitol Station, Room E1.5  
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Austin, Texas 78711  
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The Honorable Robert Nichols  
Texas Senate  
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The Honorable Ken Paxton  
Texas Senate  
Capitol Station, Room E1.810  
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The Honorable Charles Schwertner  
Texas Senate  
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The Honorable Larry Taylor  
Texas Senate  
Capitol Station, Room E2.322  
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The Honorable Leticia Van de Putte  
Texas Senate  
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The Honorable Royce West  
Texas Senate  
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The Honorable Dan Patrick  
Texas Senate  
Capitol Station, Room 3S.3  
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The Honorable Jose Rodriguez  
Texas Senate  
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The Honorable Kel Seliger  
Texas Senate  
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The Honorable Carlos Uresti  
Texas Senate  
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The Honorable Kirk Watson  
Texas Senate  
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The Honorable John Whitmire  
Texas Senate  
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The Honorable Tommy Williams  
Texas Senate  
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The Honorable Alma Allen  
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The Honorable Carol Alvarado  
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The Honorable Charles Anderson  
Texas House of Representatives  
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The Honorable Jimmie Don Aycock  
Texas House of Representatives  
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The Honorable Dwayne Bohac  
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The Honorable Judith Zaffirini  
Texas Senate  
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The Honorable Roberto Alonzo  
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The Honorable Rafael Anchia  
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The Honorable Trent Ashby  
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The Honorable Cecil Bell  
Texas House of Representatives  
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The Honorable Dennis Bonnen  
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The Honorable Greg Bonnen  
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The Honorable Cindy Burkett  
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The Honorable Angie Button  
Texas House of Representatives  
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The Honorable Terry Canales  
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The Honorable Stefani Carter  
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The Honorable Garnet Coleman  
Texas House of Representatives  
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The Honorable Dan Branch  
Texas House of Representatives  
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The Honorable Lon Burnam  
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The Honorable William Callegari  
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The Honorable Giovanni Capriglione  
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The Honorable Travis Clardy  
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The Honorable Nicole Collier  
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The Honorable Byron Cook  
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The Honorable Tom Craddick  
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The Honorable Myra Crownover  
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The Honorable Drew Darby  
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The Honorable Sarah Davis  
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The Honorable Joe Deshotel  
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The Honorable Phillip Cortez  
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The Honorable C. Brandon Creighton  
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The Honorable Tony Dale  
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The Honorable John Davis  
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The Honorable Yvonne Davis  
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The Honorable Dawna Dukes  
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The Honorable Harold Dutton  
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The Honorable Gary Elkins  
Texas House of Representatives  
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The Honorable Joe Farias  
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The Honorable Jessica Farrar  
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The Honorable Dan Flynn  
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The Honorable John Frullo  
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The Honorable Craig Eiland  
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The Honorable Pat Fallon  
Texas House of Representatives  
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The Honorable Marsha Farney  
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The Honorable Allen Fletcher  
Texas House of Representatives  
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The Honorable James Frank  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Charlie Geren  
Texas House of Representatives  
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The Honorable Helen Giddings  
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The Honorable Craig Goldman  
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The Honorable Larry Gonzales  
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(w/o enclosures)

The Honorable Mary Gonzales  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Naomi Gonzalez  
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(w/o enclosures)

The Honorable Lance Gooden  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Robert Guerra  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Ryan Guillen  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Roland Gutierrez  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Patricia Harless  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Linda Harper-Brown  
Texas House of Representatives  
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The Honorable Ana Hernandez Luna  
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(w/o enclosures)

The Honorable Abel Herrero  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Donna Howard  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Bryan Hughes  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Jason Isaac  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Kyle Kacal  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Ken King  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Harvey Hilderbran  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Dan Huberty  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Todd Hunter  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Eric Johnson  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Jim Keffer  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Phil King  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Susan King  
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(w/o enclosures)

The Honorable Tracy King  
Texas House of Representatives  
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(w/o enclosures)

The Honorable Tim Kleinschmidt  
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(w/o enclosures)

The Honorable Stephanie Klick  
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The Honorable Lois Kolkhorst  
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(w/o enclosures)

The Honorable Matt Krause  
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(w/o enclosures)

The Honorable John Kuempel  
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The Honorable Lyle Larson  
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The Honorable Jodie Laubenberg  
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The Honorable George Lavender  
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The Honorable Jeff Leach  
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The Honorable Tyron Lewis  
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The Honorable Oscar Longoria  
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The Honorable J.M. Lozano  
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The Honorable Eddie Lucio  
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The Honorable Marisa Marquez  
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The Honorable Armando Martinez  
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The Honorable Trey Martinez Fischer  
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The Honorable Ruth Jones McClendon  
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The Honorable Jose Menendez  
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The Honorable Borris Miles  
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The Honorable Doug Miller  
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The Honorable Rick Miller  
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The Honorable Joseph Moody  
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The Honorable Geanie Morrison  
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The Honorable Jim Murphy  
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The Honorable Alfonso Nevarez  
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The Honorable Robb Orr  
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(w/o enclosures)

The Honorable Christopher Paddie  
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The Honorable Diane Patrick  
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The Honorable Sergio Munoz  
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The Honorable Elliott Naishtat  
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The Honorable Rena Oliveira  
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The Honorable John Otto  
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The Honorable Tan Parker  
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The Honorable Mary Anne Perez  
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(w/o enclosures)

The Honorable Charles Perry  
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The Honorable Joe Pickett  
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(w/o enclosures)

The Honorable Walter Price  
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The Honorable Bennett Ratliff  
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The Honorable Ron Reynolds  
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The Honorable Allan Ritter  
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The Honorable Larry Phillips  
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(w/o enclosures)

The Honorable Jim Pitts  
Texas House of Representatives  
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The Honorable John Raney  
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The Honorable Richard Raymond  
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The Honorable Debbie Riddle  
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The Honorable Eddie Rodriguez  
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(w/o enclosures)

The Honorable Justin Rodriguez  
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The Honorable Scott Sanford  
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The Honorable Kenneth Sheets  
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The Honorable Ralph Sheffield  
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The Honorable David Simpson  
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The Honorable John Smithee  
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