



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 1, 2013

Mr. Ronny H. Wall
Associate General Counsel
Texas Tech University System
Box 42021
Lubbock, Texas 79409-2021

OR2013-19083

Dear Mr. Wall:

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# 504329.

Texas Tech University (the "university") received a request for emails received by the dean of the university's law school between July 22, 2013 and August 13, 2013 containing a specified term. You claim the submitted information is not subject to the Act. You also claim release of the information implicates the interests of the American Bar Association ("ABA"). Accordingly, you state, and provide documentation showing, you notified the ABA of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the ABA, considered the submitted arguments, and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

The university and the ABA contend that the information at issue 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 information that is written, produced,

collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
- (3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Id. § 552.002. Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The university states the requested documents are e-mails received by the dean solely because she is a member of a confidential listserv that is maintained for law school deans by the ABA. The university asserts the documents are only temporarily downloaded to university computers for viewing and printing, thus constituting a *de minimis* use of state resources. See Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). The university and the ABA contend that while the discussions may be related to university business, no official business decisions of the university are made or transmitted using the listserv. We note both the university and the ABA acknowledge the information at issue consists of e-mails sent and received by the dean in her capacity as dean of the law school. Further, the ABA states the purpose of the listserv is to provide the deans of ABA-accredited law schools a forum to discuss issues related to legal education and accreditation. Thus, we find the information at issue was written, produced, collected, assembled, or maintained in connection with the transaction of official business by an individual officer of a governmental body in the officer's official capacity and the information pertains to official business of the university.

The university and the ABA also contend the information is not subject to the Act because the information is maintained on a listserv owned by the ABA, which is not a governmental body. See Gov't Code § 552.003(1)(A). We note, however, the information at issue consists of e-mails between the dean and other third parties that were sent to the dean and are in the possession of the university. Furthermore, this information was collected, assembled, or maintained in connection with the transaction of the university's official business. We therefore conclude the submitted information is subject to the Act. See Gov't Code §§ 552.006, .021, .301, .302.

Next, the university and the ABA argue the submitted information is not public information because the participants on the listserv entered into discussions with the expectation the information would remain confidential. However, information is not confidential under the Act simply because the party that submits the information anticipates or requests it be kept confidential. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976). In other words, a governmental body cannot overrule or repeal provisions of the Act through an agreement or contract. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (“[T]he obligations of a governmental body under [the Act] cannot be compromised simply by its decision to enter into a contract.”), 203 at 1 (1978) (mere expectation of confidentiality by person supplying information does not satisfy requirements of statutory predecessor to section 552.110 of the Government Code). Consequently, unless the submitted information comes within an exception to disclosure, it must be released, notwithstanding any expectation or agreement to the contrary.

We note a portion of the information is subject to section 552.137 of the Government Code.¹ 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). Section 552.137 is not applicable to the work e-mail address of an employee of a governmental body because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. Upon review, we find the university must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the university must withhold the e-mail addresses we have marked under section 552.137 of the Government Code. The remaining information must be released.²

The ABA also requests a decision from the Attorney General that no e-mails on the listserv in question are subject to public disclosure under the Act. We decline to issue such a ruling

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470(1987).

²We note the requestor has a right of access to his own personal e-mail address in the information that is being released. *See* Gov’t Code § 552.137(b) (personal e-mail address of member of public may be disclosed if owner of address affirmatively consents to its disclosure). This office issued Open Records Decision No. 684 (2009) as a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision, including an e-mail address of a member of the public under section 552.137 of the Government Code. Thus, if the university receives another request for this same information from a person who does not have such a right of access, Open Records Decision No. 684 authorizes the university to redact this requestor’s personal e-mail address without requesting a ruling from this office. *See* ORD 684.

at this time. Consequently, 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, 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,



Alia K. Plasencia-Bishop
Assistant Attorney General
Open Records Division

AKPB/eb

Ref: ID# 504329

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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