



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 10, 2014

Ms. Ana Vieira
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-00703

Dear Ms. Vieira:

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# 510539 (OGC Nos. 152760 and 152761).

The University of Texas at San Antonio (the "university") received two requests from the same requestor for eight categories of information pertaining to two named individuals. You state you are releasing some of the requested information to the requestor. You further state you will redact information pursuant to sections 552.024(c) and 552.136(c) of the Government Code and Open Records Decision No. 684 (2009).¹ You claim portions of the submitted information are not subject to the Act. Additionally, you claim the remaining submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code. We have considered your arguments and reviewed

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain 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 opinion.

the submitted representative sample of information.² We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, you assert the University of Texas Electronic Identification Numbers ("UTEIDs") contained in the submitted documents are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that 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 our office that when combined with an individual's password, the UTEIDs serve as "the required log on protocol to access the computer mainframe, the University's centralized hub that runs all its high-level electronic functions." You indicate the UTEIDs are used solely to access the university's computer mainframe and that the UTEIDs have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the UTEIDs contained in the submitted documents do not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the UTEIDs are not subject to the Act and need not be released to the requestor.

Next, we address the requestor's assertion that the university did not meet its procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures a governmental body must follow in asking this office to determine whether information is exempted from public disclosure under the Act. *See* Gov't Code § 552.301(a). Pursuant to section 552.301(b), within ten business days of receipt of the request the governmental body must ask for a decision from this office and state which exceptions apply to the requested information. *Id.* § 552.301(b). The requestor asserts that the university "attempt[ed] to globally 'reserve' the right to claim possible exception," and thus failed to comply with section 552.301(b)'s requirement to state which exceptions apply. However, upon review of the university's brief sent within the ten-business-day deadline, we find the university complied with section 552.301(b) by stating all of the exceptions of the Act.

Section 552.101 of the Government Code exempts 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:

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(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 officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies. *Id.* § 51.971(a)(1). You state the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You assert the information you have marked pertains to an investigation into allegations of employee misconduct. You state the investigation is being conducted by the university's Offices of Compliance and Risk Services and Research Integrity. You further state the purpose of the review is to assess and ultimately ensure that the university has complied with all applicable law, rules, regulations, and policies. Based on your representations and our review, we agree the information at issue pertains to the university'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. You also represent release of the information at this time would interfere with, and potentially compromise, that investigation. Accordingly, we conclude the university 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.³

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

³As our ruling is dispositive of this information, we need not address your remaining arguments against its disclosure.

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 constitutes communications between university officials, employees, and attorneys that were made for the purpose of facilitating the rendition of professional legal services to the university. You also state the communications were intended to be confidential and have remained confidential. Based on your representations and our review, we find the university may withhold most of the information you have marked under section 552.107(1) of the Government Code. However, we find you have not demonstrated how the remaining information you have marked consists of communications made for the purpose of facilitating the rendition of professional legal services to the university. Therefore, the university may not withhold this information at issue in Enclosure 2 under section 552.107(1). Accordingly, except for the information we have marked for release, the university may withhold the remaining information you have marked under section 552.107(1) of the Government Code.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the information you have marked pertains to a concluded criminal investigation conducted by the university's police department that did not result in conviction or deferred adjudication. Based on your representations and our review, we conclude that the university may withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code.

In summary, the submitted UTEIDs are not subject to the Act and need not be released to the requestor. The university 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. Except for the information we have marked for release, the university may withhold the remaining information you have marked under section 552.107(1) of the Government Code. The university may withhold the remaining information you have marked under section 552.108(a)(2) of the Government Code. 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.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,

A handwritten signature in black ink, appearing to read 'Sarah Casterline', written in a cursive style.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 510539

Enc. Submitted documents

c: Requestor
(w/o enclosures)