



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 12, 1995

Ms. Melissa M. Ricard
Assistant General Counsel
Texas A&M University System
State Headquarters Bldg.
301 Tarrow, 6th Floor
College Station, Texas 77843-1230

OR95-275

Dear Ms. Ricard:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 30338.

The Texas A&M University System (the "university") has received several requests for information relating to personnel complaints, both formal and informal, against the university. You advise us that the university has made some of the requested information available to the requestor. You object, however, to release of the remaining information and claim that section 552.101 of the Government Code excepts it from required public disclosure.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with common-law privacy. Information may be withheld under section 552.101 if its release would cause an invasion of privacy under the test articulated for section 552.101 by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information must be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Generally, the public has a legitimate interest in the job qualifications and performance of public employees. See Open Records Decision No. 470 (1987) at 5.¹

¹In the past, this office has concluded that the doctrine of common-law privacy does not protect an applicant's or employee's name; address; telephone number; educational training; names and addresses

You also claim that some of the information submitted to us for review is protected by the doctrine of common-law privacy as applied in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigatory files in *Ellen* contained individual witness and victim statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. 840 S.W.2d 519. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* The court held, however, that the names of witnesses and detailed affidavits regarding the allegations of sexual harassment, was exactly the kind of information specifically excluded from disclosure under the privacy exception as described in *Industrial Foundation*. *Id.* at 525. In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* We think the holding in *Ellen* is controlling on some of the documents at issue here.

We have examined the records that you seek to withhold under section 552.101. Included among them are numerous investigator's notes, inter-departmental memoranda, and personnel records. We have marked the type of information that identifies or tends to identify the complainants and witnesses in those records concerning allegations of sexual harassment that must not be released to the requestor.² There is, however, a legitimate public interest in the remaining information concerning the sexual harassment investigations; this information may not be withheld under *Ellen*. In addition, the records unrelated to the allegations of sexual harassment are of legitimate public concern and thus may not be withheld from required public disclosure under common-law privacy.

Some of the records submitted for our review contain the addresses and telephone numbers of university employees. Section 552.117 of the Government Code excepts from public disclosure:

- (1) The home address or home telephone number of:

(Footnote continued)

of former employers; dates of employment, kind of work, salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performance or ability; birth dates; height; weight; marital status; and social security numbers. See generally Open Records Decision No. 455 (1987) at 8; see also Open Records Decision No. 169 (1977).

²Although the *Ellen* court recognized that the person accused of misconduct may in some instances have a privacy interest in information contained within investigatory files, we think in this case the public's interest in disclosure of the information outweighs the accused's privacy interest. See *Ellen*, 840 S.W.2d at 525.

(A) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024; or

(B) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code.

In pertinent part, section 552.117 excepts from disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold any home address or telephone number of a peace officer that appears in the requested documents. In addition, section 552.117 requires you to withhold any home address or telephone number of an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home address or telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.

The submitted records also include criminal history record information ("CHRI") distributed at the state and federal level. Federal regulations prohibit the release to the general public of CHRI obtained from the National Crime Information Center. See Attorney General Opinion JM-1224 (1990) at 6; Open Records Decision No. 565 (1990) at 11-12. In addition, section 411.097(c) of the Government Code prohibits the university from disclosing any CHRI obtained from the Department of Public Safety ("DPS") or any other criminal justice agency. See also Gov't Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Accordingly, pursuant to state law and federal regulations, the university must not release the submitted CHRI to the requestor.

Finally, we note that the records submitted for our review contain social security numbers of various university employees. A social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. See Open Records Decision No. 622 (1994); see also 42 U.S.C. § 405(c)(2)(C)(v) (governing release of social security number collected in connection with administration of any general public assistance, driver's license or motor vehicle registration law). However, hiring an individual after October 1, 1990, is not the same as obtaining an individual's social security number pursuant to a law enacted on or after October 1, 1990. For example,

an employer is required to obtain a new employee's social security number for tax purposes under a law that predates October 1, 1990, and thus, a social security number obtained under this law is not made confidential by the 1990 amendments to the Social Security Act. Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the university should ensure that the information is not confidential under this federal statute.

In conclusion, except as otherwise indicated, the university must release the requested information. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 30338

Enclosures: Marked documents

cc: Mr. James L. Rea, Jr.
205 Fireside Circle
College Station, Texas 77840
(w/o enclosures)