



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 20, 1996

Ms. R. Yvette Clark
General Counsel
Stephen F. Austin State University
P.O. Box 13065, SFA Station
Nacagdoches, Texas 75962-3065

OR96-0983

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 39693.

Stephen F. Austin State University (the "University") has received a request for information relating to the University's 1990-92 Insurance Fund. You state that most of the requested information is being provided to the requestor. However, you assert that certain documents submitted for our review may be protected from required public disclosure under sections 552.101, 552.102, 552.107, 552.111, and 552.117 of the Government Code.

The first category of documents you seek to withhold includes (1) a list of employees, including their social security numbers and the insurance premium amounts paid by these employees, (2) a list of employees' family members, including their social security numbers and the insurance premium amounts paid by these employees, and (3) a list of employees or employees' family members regarding Medicare secondary payments made. You do not object to the release of state-paid premium information but assert that sections 552.101, 552.102, and 552.117 except the remainder of this information from required public disclosure.

Section 552.101 excepts information considered confidential by law, either constitutional, statutory, or by judicial decision, and incorporates the doctrine of common-law privacy. Section 552.102 protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider the applicability of these two exceptions together.

In order to be within the common-law right to privacy, the information must (1) contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) be of no legitimate concern to the public. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Items (1) and (2) above reveal personal decisions relating to optional insurance coverage of employees which this office has previously held is excepted under a common-law right to privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Therefore, the names and social security numbers on these two forms must be withheld under section 552.101 of the Government Code in conjunction with the common-law right to privacy. The remaining information on these two items must be released to the requestor. Item (3), a list of employees or employees' family members regarding Medicare secondary payments made, contains no information which we find is highly intimate or embarrassing and, therefore, may not be withheld under section 552.101.

Section 552.117 excepts information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for 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 this information if the employee had not made a request for confidentiality under section 552.024 at the time 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. We have marked the possible section 552.117 information on item (3) which must be withheld if the employee requested confidentiality of this information under section 552.024.

You also seek to withhold from required public disclosure a second category of documents, communications which you assert are confidential attorney-client communications under section 552.107 and 552.111.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 (1990) at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* Section 552.111 excepts from required public disclosure only those internal communications consisting of advice, recommendations, opinions,

and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 (1993). We have reviewed the documents provided this office and agree that most of the information in these documents reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions and, thus, may be withheld under section 552.107(1). However, we have marked three documents which are purely factual communications and may not be withheld under either section 552.107(1) or 552.111.

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 may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 39693

Enclosures: Marked documents

cc: Ms. Shirley Goldsmith
Organizational Specialist
Texas Faculty Association
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(w/o enclosures)