



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 13, 1996

Ms. Cheryl N. Elliott
General Counsel
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

OR96-1661

Dear Ms. Elliott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100599.

Texas Southern University (the "university") received an open records request for personnel information, such as name, rank, current and proposed salary, and mailing address, of full-time and part-time faculty, departmental addresses, and the university's e-mail address.¹ You assert that the requested information is excepted from disclosure under section 552.102 of the Government Code. We have considered the exception you claim.

You requested an attorney general decision relating to this request for information, which was received by our office on June 20, 1996. In this request for an attorney general decision, you sought to withhold the requested records pursuant to section 552.102 of the Government Code. You did not, however, submit to our office the actual request from the requestor and copies of the requested information for our review that is required to be submitted to our office under section 552.301(b).

¹We would like to note that this office ruled on a similar request to the university in Open Records Letter No. 96-0795 (1996). In that ruling, we informed the university that information relating to a public employee's salary and job position is clearly public information. Open Records Decision No. 342 (1982) at 3. We enclose a copy of Open Records Letter No. 96-0795 (1996) for your information.

Pursuant to section 552.303(c) of the Government Code, on June 26, 1996, our office notified you by letter sent via facsimile that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e), failure to comply would result in the legal presumption that the requested information is public information.

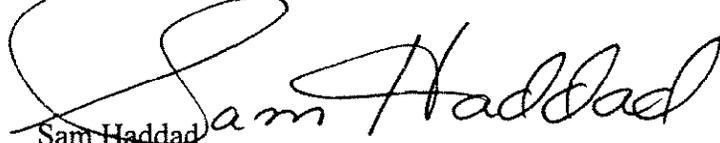
You did not timely provide our office with the information that was requested in our seven day notice to you. Therefore, as provided by section 552.303(e), the information that is the subject of this request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Section 552.102 can be a compelling reason to allow the withholding of documents, if the exception is applicable to the requested information. Therefore, we address your claimed exception.

You claim that the requested information is excepted from disclosure because it is confidential by law and it is protected by privacy. Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Although section 552.102 is designed to protect public employees' personal privacy, the scope of this exception is very narrow. See Open Records Decision No. 336 (1982); see also Attorney General Opinion JM-36 (1983). The test for section 552.102 protection is the same as that for information protected by common-law privacy under section 552.101: the information must 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* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.-Austin 1983, writ ref'd n.r.e.).

The information you wish to withhold appears to relate to the salary and job titles of public employees. This office has long held that information relating to a public employee's salary and job position is clearly public information. Open Records Decision No. 342 (1982) at 3 (name, position, experience, tenure, salary and education long held to be disclosable). Previous decisions issued by this office have ruled that this type of information is not highly intimate or embarrassing and there exists a legitimate public interest in this information. See Open Records Decision No. 165 (1977). Despite the fact that you have failed to submit to our office the actual request from the requestor and copies of the requested information for our review, which is required under section 552.301(b), it appears that the information sought is not excepted under section 552.102 and should be disclosed.

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 cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the typed name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 100599

Enclosures: Open Records Letter No. 96-0795 (1996)

cc: Mr. Jim Herrington
1415 Southmore
Houston, Texas 77004
(w/o enclosure)