



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 15, 1998

Mr. Scott A. Kelly  
Deputy General Counsel  
A & M University System  
301 Tarrow, 6<sup>th</sup> Floor  
College Station, Texas 77840-7896

OR98-2197

Dear Mr. Kelly:

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# 117964.

Texas A&M University (the "university") received an open records request for the following information:

1. A list of all charges made by [university] workers on state American Express cards for the month of December, 1997. For each charge of each employee, please show name of place where charge occurred, location of place where charge occurred, amount of charge, and date of charge. Please delete employee names and card numbers.
2. The same list as requested in Item No. 1, but please include employee names.

You suggest that the requested information may be confidential under the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* We have reviewed the provisions of this statute and find them to be inapplicable to the records at issue. The Fair Credit Reporting Act restricts the circumstances under which a "consumer reporting agency" may release an individual's "consumer report," *see* 15 U.S.C. § 1681b(a), which the statute defines as

any written, oral, other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal

characteristics, or mode of living which is used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (A) credit or insurance to be used primarily for personal, family, or household purposes, or (B) employment purposes, or (C) other purposes authorized under section 604 [15 U.S.C. § 1681b].

15 U.S.C. § 1681a(d)(1). The information at issue does not come within the above quoted definition of "consumer report," but rather is specifically excluded from the scope of the statute as a report "containing information solely as to transactions . . . between the consumer and the person making the report." 15 U.S.C. § 1681a(d)(2). We therefore conclude that the university may not withhold the requested information pursuant to the Fair Credit Reporting Act.

You also contend that the requested information is confidential on privacy grounds. Section 552.102(a) of the Government Code exempts from required public disclosure

information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982). *See also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) 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 Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

In Texas Ethics Advisory Opinion No. 95 (1992), the Texas Ethics Commission described the procedures prescribed for public employees' use of state-owned credit cards:

Under an existing contract (the "Agreement") between the State of Texas ("State") and a company that issues charge or credit cards ("Card Company"), the Card Company agrees to issue a card to state employees designated by the State "who routinely incur expenses on behalf of the state." The Card Company reserves the right to determine the creditworthiness of each such employee, and may in its sole

discretion decline to issue a card to any person. The State may require cancellation by the Card Company of a card at any time, with or without cause and without prior notice. For cause, the Card Company may suspend or cancel an issued card at any time.

The Card Company sends monthly statements to each employee issued a card. That employee is solely and exclusively responsible for paying all charges incurred by use of the card. By explicit provision of the Agreement, the State has and assumes no liability for any of those charges. The employee, in turn, is reimbursed by the State for all authorized business charges, as determined by the State. Under another provision of the Agreement, the State agrees to instruct each employee who receives a card that the card is to be used for "official State business expenses that are reimbursable in accordance with applicable State law."

....

The card furnished to a state employee under the Agreement -- and the privilege and benefit of its use -- belongs to the State. Only an employee designated by the State may receive one of these cards, and the employee comes into possession and gains the right to use the card only by virtue of state office or employment. The State, through the Card Company, may cancel the card "at any time with or without cause and without prior notice." Even though the employee is entrusted with possession of the card and with the additional responsibility of receiving and paying all charges incurred on that card, the powers retained by the State under the Agreement to control and cancel the card establish the card's character as property of the State.

....

Intentional or knowing use by a state employee of a state-issued card for other than state purposes violates both subsections (a)(1) and (a)(2) of Penal Code section 39.01. The use of state property for other than state uses is prohibited by law. A knowing or intentional violation of this law by a state employee constitutes a violation of Penal Code section 39.01(a)(1). This offense is a Class A misdemeanor. Penal Code § 39.01(b).

Neither may a state employee, with the intent to obtain a benefit, intentionally or knowingly "misapply any thing of value belonging to the government that has come into his custody or possession by virtue

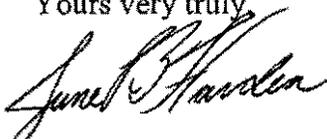
of his office or employment.” *Id.* § 39.01(a)(2). A state employee benefits simply from the use of a state-issued card to charge goods or services, because the card substitutes for cash or other payment otherwise required from the cardholder. The use is therefore a benefit for purposes of section 39.01; certainly any goods or services obtained by the state employee with the card are even more tangible benefits. . . . A state employee violates section 39.01(a)(2) whenever the employee knowingly or intentionally uses the card to acquire goods or services that are not official state business expenses . . . . Punishment for an offense under section 39.01(a)(2) depends on the value of the use of the thing misapplied, ranging from a Class C misdemeanor to a felony of the second degree. *Id.* § 39.01(c).

Texas Ethics Advisory Opinion No. 95 (1992) (footnotes and citations omitted).<sup>1</sup>

Given the Texas Ethics Commission’s conclusions, the public interest in the university employees’ use of state-owned credit cards is clear. The information at issue pertains solely to the employees’ use of state property, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986). The university therefore must release the requested information in its entirety.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RWP/ch

Ref.: ID # 117964

Enclosures: Submitted documents

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<sup>1</sup>Texas Ethics Advisory Opinion No. 95 was reversed on other grounds by Texas Ethics Advisory Opinion No. 147 (1993).

cc: Ms. Denise Gamino  
Austin American Statesman  
305 S. Congress Avenue  
Austin, Texas 78704  
(w/o enclosures)