



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 15, 1998

Mr. Delmar Cain
General Counsel
Texas A&M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR98-3110

Dear Mr. Cain:

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# 120787.

The Texas A&M University System (the "system") received an open records request for a preliminary report on possible misuse of telephone service, which you contend may be withheld from the public pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); Open Records Decision No. 588 at 1 (1991). In this instance, you have not made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103. See Open Records Decision No. 452 at 4 (1986) (to demonstrate reasonably anticipated litigation, governmental body must furnish concrete evidence that litigation involving specific matter is realistically contemplated). Consequently, the system may not withhold the requested records pursuant to section 552.103.

We also note that, contrary to the contentions of an attorney representing one of the subjects of the report, none of the information at issue consists of information that implicates the common-law privacy interests of the individuals under investigation. Common-law privacy, as incorporated into section 552.101 of the Government Code, protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Both prongs must be met to withhold

information under common-law privacy. Open Records Decision No. 545 at 2 (1990). We believe there is a legitimate public interest in accusations of dishonesty against governmental officers or employees in their dealings with a governmental body. *See* Open Records Decision Nos. 372 (1983), 269 (1981), 230 (1979). The university may not withhold any of the information at issue pursuant to common-law privacy.

We note, however, that some of the information at issue may be protected from public disclosure pursuant to section 552.117 of the Government Code. Section 552.117 excepts from disclosure, *inter alia*, the home telephone numbers of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). If either of the individuals who are the subjects of the report made the election prior to the date on which the system received the open records request, the system must withhold the respective employees' home telephone numbers pursuant to section 552.117. All remaining information, however, must be released.

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,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/nc

Ref.: ID# 120787

cc: Mr. John Kirsch
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(w/o enclosures)