OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

August 17, 1999

Ms. Pamela S. Bacon
Public Information Administrator
The University of Texas System
601 Colorado Street
Austin, Texas 78701-2982

OR99-2329

Dear Ms. Bacon:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126752.

The University of Texas System (the "system") received a request for certain information. You asserted those records were protected under sections 552.101, 552.102, and 552.117 of the Government Code. We issued a ruling concerning some of the responsive documents, Open Records Letter No. 99-1358 (1999) (enclosed), but you submitted additional responsive documents to this office. We received those supplemental documents after the ruling was issued. Thus, we will consider your arguments concerning these additional records.

You assert that some of the information is protected from disclosure under sections 552.101 and 552.102. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The test to determine whether information is private and excepted from disclosure under common-law privacy as encompassed in sections 552.101 and 552.102 of the Government Code is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Tex. Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

Information found in public employee personnel files that reveals personal financial information generally is excepted from public disclosure under the common-law privacy test, except to the extent that the information reflects a transaction between the employee and the

public. Open Records Decision Nos. 600 (1992) (information about public employee's participation in a group insurance program, retirement benefits beneficiaries, tax exempt reimbursement accounts, and direct deposit), 545 (1990) (information about a public employee's participation in a deferred compensation plan). Therefore, the submitted financial information must be disclosed if the system contributed to any of the payments or programs. Open Records Decision No. 600 (1992). However, the submitted financial information is excepted from disclosure if it relates to voluntary programs and payments that the employee made in an option benefits plan offered by the system. *Id.* We have marked the documents accordingly.

Additionally, some of the documents must also be withheld under federal law. The W-4 forms and worksheet are confidential as tax return information under title 26, section 6103(a) of the United States Code. Open Records Decision No. 600 at 8-9 (1992). We have also marked some information that may be confidential in accordance with our prior ruling, Open Records Letter No. 99-1358 (1999). Please refer to that prior ruling. Information that is not marked as confidential 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.

Sincerely,

Karen Hattaway

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/RHS/ch

Ref: ID# 126752

Encl. Submitted documents

cc: Mr. Stephen Lisson
Initiate!!
P.O. Box 2013
Austin, Texas 78768
(w/o enclosures)