



July 17, 2000

Mr. Arturo G. Michel
Bracewell & Patterson
711 Louisiana Street, Suite 2900
Houston, Texas 78207

Dear Mr. Michel:

Enclosed please find a corrected copy of ID# 136995 (OR2000-2621). The original document sent to you inadvertently was a misprint. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Precilla Rodriguez
Secretary to:
Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136995

cc: Mr. Orell Fitzsimmons
Service Employees Intl. Union
704 East 11 1/2 Street
Houston, Texas 77008.
(w/enclosure)



July 13, 2000

Mr. Arturo G. Michel
Bracewell & Patterson
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2000-2621

Dear Mr. Michel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136995.

The Houston Community College System (the "system"), which you represent, received a request for a variety of information, most of which the system has provided to the requestor. However, you claim that the "personnel records and pertinent information kept on file at the Gulfton Campus" are excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

We first note that section 552.301(b) of the Government Code requires that a governmental body must ask for the attorney general's decision "not later than the 10th business day after the date of receiving the written request." Because the system received the request for information on April 17, 2000, the system had until May 1, 2000, to request a decision from this office. This office did not receive your request for a decision until May 8, 2000. That request for a decision was postmarked May 5, 2000. Therefore, we conclude that you did not request the decision from this office within the ten business day period mandated by section 552.301(b). Because the request for a decision was not timely made, the requested information is presumed to be public information. Gov't Code § 552.302.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). One or more of the exceptions to

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

disclosure which you raise may provide such a compelling reason; therefore, we will consider their applicability.²

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This section encompasses information made confidential by statutes outside the Public Information Act. Some of the information you have highlighted is student-identifying information. The Family Educational Rights and Privacy Act of 1974 (“FERPA”) provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). “Education records” means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978). Accordingly, you must withhold student-identifying information contained in the submitted materials, as you have marked, under section 552.101 in conjunction with FERPA.

You assert that the responsive information includes W-4 forms. We do not find any W-4 forms among the submitted information. However, section 6103(a) of title 26 of the United States Code renders tax return information confidential. The term “return information” includes “the nature, source, or amount of income” of a taxpayer. 26 U.S.C. § 6103(b)(2). This term has been interpreted by federal courts to include any information gathered by the Internal Revenue Service regarding a taxpayer’s liability under title 26 of the United States Code. *Mallas v. Kolak*, 721 F. Supp 748 (M.D.N.C. 1989). Our office has specifically held that W-4 forms must be withheld in their entirety. Open Records Decision No. 600 at 9 (1992). Therefore, you must withhold any responsive W-4 forms under section 552.101 of the Government Code.

The common law privacy aspect of section 552.101 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 Foundation* at 683-85.

²If a governmental body wishes to withhold particular information, it must establish that a particular exception applies to the information. Gov’t Code § 552.301. If a governmental body does not establish how and why an exception applies to the requested information, the attorney general has no basis on which to pronounce it protected. *See* Open Records Decision No. 363 (1983). Accordingly, we will not address the exceptions listed in your request for a decision but not explained in your brief.

An individual's personal financial information may be excepted from required public disclosure under the common law privacy aspect of section 552.101. In Open Records Decision No. 373 (1983), this office addressed the availability of personal financial information submitted to a city by an applicant for a housing rehabilitation grant. In that decision, this office concluded:

all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

ORD No. 373. Whether the public has a legitimate interest in such information, however, must be determined on a case-by-case basis. *Id.* at 4; *see also* Open Records Decision Nos. 600 (1992), 545 (1990). In Open Records Decision No. 545, this office applied a similar presumption to personal financial information of public employees and held that, absent "special circumstances," information concerning a public employee's participation in a deferred compensation plan is protected from disclosure by common law privacy. ORD No. 545 (1990). However, because there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not excepted from disclosure. ORD No. 600 at 10 (1992). For example, this office has held that an employee's participation in the Texas Municipal Retirement System or in a group insurance plan funded by the governmental body is not excepted from disclosure under common law privacy. *Id.*, Open Records Decision No. 480 (1987). Therefore, an employee's participation in the Teacher Retirement System may not be withheld.

However, the employee's optional coverages will generally be funded by the employee and not the state. An employee's decision to enroll for optional coverages is a personal financial decision to allocate part of his compensation to optional benefits, and, therefore, the related information is excepted from disclosure by a right of privacy. So, any information revealing the election of optional coverages must be withheld under common law privacy. We also note that the designation of a retirement beneficiary is protected from disclosure under section 552.101. Open Records Decision No. 600 (1992). The documents also contain credit card and checking account numbers which are protected by common law privacy. We have marked the personal financial information which must be withheld under section 552.101.

The submitted information also contains medical information which may be intimate and embarrassing. We have marked the medical information which is protected by common law privacy and must be withheld under section 552.101.

You assert that the college transcripts included in the submitted materials are excepted from disclosure by section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." We have interpreted "professional public school employee," to refer to employees of public schools providing "public education" under title 2 of the Education Code, not colleges and universities providing "higher education" under title 3 of the Education Code. Therefore, section 552.102(b) is inapplicable to the transcripts. Accordingly, the system must release the transcripts to the requestor. *See* Open Records Decision Nos. 470 (1987), 467 (1987) (public has legitimate interest in job qualifications, including college transcripts, of public employees).

Sections 552.024 and 552.117(1) of the Government Code provide that a public employee or official can opt to keep private his or her home address, home telephone number, social security number, and information that reveals that the individual has family members. Such information must be withheld if, at the time the request for information is made, the employee had elected to keep the information private. Open Records Decision Nos. 530 (1989), 482 (1987), 455 (1987). Accordingly, you must withhold all section 552.117 information for all employees who made a section 552.024 election to keep that information confidential prior to the system's receipt of the request for information.

In addition, the submitted information contains some information which must be withheld as confidential under section 552.130. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from [required public disclosure] if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

The Texas driver's license numbers must be withheld under section 552.130.

In summary, you must release the requested information, including the transcripts, but must redact the marked information under sections 552.101, 552.117, and 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136995

Encl. Submitted documents

cc: Mr. Orell Fitzsimmons
Service Employees Intl. Union
704 East. 11 ½ Street
Houston, Texas 77008
(w/o enclosures)