



August 11, 2000

Mr. J. Robert Giddings
University of Texas Systems
201 West 7th Street
Austin, Texas 78701-2981

OR2000-3062

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 138149.

The University of Texas at Tyler (the “university”) received a request for information “concerning the investigation of a tractor missing from the Physical Plant on campus.” You state that a portion of the requested information will be made available to the requestor. You claim, however, that some of the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You explain that the a portion of the information responsive to the request consists of administrative and personnel information. You state that you will release this information to the requestor after redacting employee personal financial information, social security numbers, and personal bank account numbers.

An individual’s social security number is confidential if it was obtained or is maintained by the university pursuant to any provision of law enacted on or after October 1, 1990. *See* 42 U.S.C. § 405(c)(2)(C)(viii); Open Records Decision No. 622 (1994). In addition, Government Code section 552.117(1) excepts from disclosure the home addresses, telephone numbers, social security numbers, and family information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 allows you to withhold this information if the employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the individual made the request for confidentiality under section 552.024

after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

Next, we address the personal financial information and personal bank account numbers. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Common law privacy excepts from disclosure private facts about an individual. *Id.* Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

In Open Records Decision No. 373 (1983), this office concluded the following:

[A]ll 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.

Further, the public has no legitimate interest in personal financial information not involving a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 545 (1990). However, prior decisions of this office have found that financial information relating to an individual ordinarily satisfies the first requirement of the test for common law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *Id.*; Open Records Decision No. 373 (1983).

Pursuant to section 552.301(e)(1)(D), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy or representative samples of the specific information requested, labeled to indicate which exceptions apply to which parts of the documents. Pursuant to section 552.302 of the Government Code, a governmental body’s failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason 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). We conclude that you may withhold personal bank account numbers contained within the administrative and personnel information. However, with regards to any remaining personal financial information, we have no basis upon which to determine whether the information is confidential because you have not submitted the responsive information. Thus, you have not shown a compelling interest to overcome the presumption that the information at issue is public. Accordingly, you must release the remaining personal financial information. We caution that the distribution of confidential information constitutes a criminal offense. *See* Gov't Code § 552.352.

We now turn to your claimed exception regarding the police file. Section 552.108(a)(1) excepts from public disclosure information which would "interfere with the detection, investigation, or prosecution of crime[.]" You explain that the submitted documents were created by university police as part of an ongoing criminal investigation. You state that no arrests have been made and the criminal investigation is still in progress. Based upon this representation and a review of the submitted documents, we find that the submitted information is excepted from disclosure pursuant to section 552.108(a)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. *See* Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. --Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, you must release the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the requested report. Thus, with the exception of the basic front page offense information which must be disclosed, you may withhold the information based on subsection 552.108(a)(1). Although section 552.108(a) authorizes you to withhold the remaining information from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the employee social security numbers are confidential if obtained or maintained by the university pursuant to any provision of law enacted on or after October 1, 1990. The employee social security numbers may also be withheld if an employee requested that this information be kept confidential prior to the date of this request. You must withhold the personal bank account information, but any remaining personal financial information must be released to the requestor. Except for basic information, the remaining information of the police file may be withheld.

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,



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 138149

Encl. Submitted documents

cc: Ms. Wendy Moore
The Patriot News
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(w/o enclosures)