



March 29, 2001

Mr. Jon P. McGough  
Assistant General Counsel  
University of North Texas Health Science Center at Fort Worth  
3500 Camp Bowie Boulevard  
Fort Worth, Texas 76107-2699

OR2001-1245

Dear Mr. McGough:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145441.

The University of North Texas Health Science Center (the "university") received a written request for, among other things, the personnel file of a university employee. You contend that portions of the employee's personnel file are excepted from required public disclosure pursuant to sections 552.101 and 552.117(1) of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of information you submitted to this office.<sup>1</sup>

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, *statutory*, or by judicial decision." (Emphasis added.) Some of the information at issue is deemed confidential pursuant to statutory law. Among the records at issue is the employee's W-4 form. This form constitutes confidential "tax return

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<sup>1</sup>In reaching our conclusion here, we 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 No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information” and as such must be withheld in its entirety pursuant to federal law. *See* 26 U.S.C. § 6103.

You also submitted to this office an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5). Release of this document under the Public Information Act would be “for purposes other than for enforcement” of the referenced federal statutes. Accordingly, we conclude that Form I-9 is confidential for purposes of section 552.101 of the Government Code and may only be released in compliance with the federal laws and regulations governing the employment verification system.

We also note that some of the information at issue is made confidential under Title I of the Americans with Disabilities Act of 1990 (the “ADA”), 42 U.S.C. §§ 12101 *et seq.*, and thus must be withheld pursuant to section 552.101 of the Government Code. The ADA provides that information about the medical conditions and medical histories of applicants or employees must be 1) collected and maintained on separate forms, 2) kept in separate medical files, and 3) treated as a confidential medical record. Even in instances where information does not reveal any specific information about an employee’s medical conditions or medical histories, this office has nevertheless concluded that the types of information we have marked must be withheld from the public pursuant to the ADA. *See* Letter from Ellen J. Vargyas, Legal Counsel, EEOC, to Barry Kearney, Associate General Counsel, National Labor Relations Board, 3-4 (Oct. 1, 1997) (Equal Employment Opportunity Commission determined that “medical information” for purposes of ADA includes “specific information about an individual’s disability and related functional limitations, as well as general statements that an individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual”).

Finally, you contend that information regarding the employee’s participation in the group insurance program and the Employees Retirement System is made confidential under section 815.503 of the Government Code, which provides as follows:

Records of members and annuitants under *retirement plans* administered by the [Employees Retirement System] that are in the custody of the system or of an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure and are exempt from the public access provisions of [the Public Information Act] . . . . [Emphasis added.]

We note that although the employee receives certain insurance benefits through the Employees Retirement System, the employee’s retirement benefits are administered by the Teachers Retirement System. Because the applicability of section 815.503 of the

Government Code is limited to records of public employees who are members of the Employees Retirement System, this provision does not protect any information in the employee's personnel file.

You also contend that section 552.101 protects the employee's privacy interests. We believe, however, that the more applicable exception in this instance is section 552.102(a) of the Government Code. Section 552.102(a) protects, in pertinent part, "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 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.).

Information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. *Id.* Therefore, the fact that an employee participates in a group insurance plan funded by a governmental employer and the amount of any payroll deduction therefor is not information that is excepted from disclosure. Open Records Decision No. 600 at 9 (1992). On the other hand, information relating to an employee's choice of insurance carrier and his election of optional coverages is confidential under the right of privacy. *Id.* at 10-11. Additionally, some of the records at issue reveal the employee's designation of a beneficiary, which also reflects a personal financial decision that is protected by common law privacy. *See* Open Records Decision No. 600 at 11 (1992). We have marked the documents at issue to reflect the information protected by common law privacy.

Section 552.117(1) of the Government Code requires that the university withhold the home address, home telephone number, social security number, and family information of current or former university employees who request that this information be kept confidential under section 552.024 of the Government Code. You state that the employee has elected under section 552.024 not to allow public access to her information. Accordingly, if the employee made the section 552.024 election prior to the university's receipt of the current records request for each of the above-stated categories of information, the university must redact this information contained in the documents that are otherwise subject to release. *See* Open Records Decision No. 530 (1989).

Finally, some of the documents at issue contain a copy of the employee's driver's license. Section 552.130(a)(1) of the Government Code requires the university to withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit

issued by an agency of this state.” Accordingly, the university must withhold the employee’s driver’s license pursuant to section 552.130(a)(1) of the Government Code.

In summary, the university must withhold pursuant to section 552.101 of the Government Code the following information: the employee’s W-4 form, I-9 form, and all ADA information. The university must also withhold pursuant to section 552.102(a) the information we have marked as coming within the common law right of privacy. The university withhold the employee’s home address, home telephone number, social security number, and family information pursuant to section 552.117(1), and the employee’s driver’s license information pursuant to section 552.130(a)(1). Any remaining information in the personnel file must be released to the requestor.

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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/RWP/seg

Ref: ID# 145441

Encl. Submitted documents

cc: Mr. David Claire  
4809 El Campo Avenue  
Fort Worth, Texas 76107  
(w/o enclosures)