



June 3, 2002

Ms. Carol Longoria
Public Information Coordinator
The University of Texas System
201 West 7th Street
Austin, Texas 78701-2981

OR2002-2083A

Dear Ms. Longoria:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 161783. This office issued Open Records Letter No. 2002-2083 (2002) to the University of Texas System (the "system") on April 24, 2002. We have re-examined our ruling in ORL No. 2002-2083, and determined that we made an error. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that the Office of Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of this chapter). Consequently, this decision serves as the correct ruling and is a substitute for the decision issued on April 24, 2002.

The system received four requests for the following information related to nineteen named employees of the system:

- (1.) name, sex, ethnicity, salary, title, and dates of employment[;]
- (2.) home telephone number, social security number, whether the person has family members[;]
- (3.) medical information/records
- (4.) drivers license and motor vehicle information;
- (5.) attorney-client communications;
- (6.) attorney work product;

- (7.) documents made confidential by statute;
- (8.) documents claimed to be proprietary by a third party[;]
- (9.) public court record[s] [of five of the named individuals; and]
- (10.) a rule of procedure, a description of forms available or the places at which forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations . . . to access public and non-public information.

You state that information responsive to category 1 has been released to the requestor. You inform us that the system has no information responsive to categories 3, 6, 8, and 9 of the request. Chapter 552 of the Government Code does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

You state that category 10 of the request is a series of factual questions and not a request for information. You further inform us that the requestor has also asked for the "right e-mail address . . . [for] the Texas Commission on Law Enforcement." We agree that the Public Information Act (the "Act") does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. We note, however, that the Act does require the governmental body to make a good faith effort to relate a request to information that the governmental body holds or to which it has access. *See Open Records Decision Nos. 563 at 8 (1990), 561 at 8-9 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989).*

You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹ We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

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).* 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.

Initially, we must address the system's obligations under section 552.301 of the Government Code. A governmental body wishing to withhold requested information must request an attorney general's decision no later than the tenth business day after the date of receiving the written request. Gov't Code § 552.301(b). In this case, the system failed to request a decision from this office within ten business days of receiving the first request. You explain, however, that because of the broad nature of the request, you sought clarification from the requestor on February 7, 2002. *See* Gov't Code § 552.222(b) (authorizing governmental body's request for clarification of records request). The ten-business-day deadline for requesting a decision from this office was tolled during the time that the system was awaiting a response to its clarification request. *See* Open Records Decision No. 663 at 5 (1999). The system received the requestor's clarification on February 11, 2002; consequently, the ten-business-day period resumed on February 11, 2002. Thus, the deadline for submitting a request for a decision from this office was February 20, 2002. You submitted your request for a decision on February 20th; accordingly, we conclude that you did timely request a decision from this office pursuant to section 552.301 of the Government Code.

We next note that the submitted information in Tab 10 includes a court document. Information filed with a court is generally a matter of public record and may not be withheld from disclosure. Gov't Code § 552.022(a)(17); *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). You claim, however, that portions of the document at issue are confidential under sections 552.117 and 552.130 of the Government Code. We will therefore address your claims for this document along with the other submitted information.

Section 552.117(1) may be applicable to some of the submitted information. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information 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(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the system may only withhold information under section 552.117(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the system must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The system may not withhold this information under section 552.117(1) for those employees who did not make a timely election to keep the information confidential.

The requested records also contain information that is excepted from disclosure under section 552.117(2). The system must withhold those portions of the records that reveal an officer's home address and telephone number, social security number, and any information that reveals whether the officer has family members. We have marked the types of information that must be withheld under section 552.117.

Included in the submitted information is a Texas driver's license number. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 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 system must withhold the Texas driver's license number under section 552.130.

The submitted information also contains e-mail addresses obtained from the public. Section 552.137 of the Government Code provides in relevant part:

(a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The system must, therefore, withhold the e-mail addresses which you have marked under section 552.137.

We observe that the information that is excepted from disclosure under sections 552.117, 552.130, and 552.137 is contained in documents not otherwise responsive to the instant request for information. Accordingly, the nonresponsive information in those documents need not be released in response to this request.

You next argue that section 552.101 of the Government Code excepts a portion of the requested information from public disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The submitted information contains an employee W-4 form. Employee W-4 forms are excepted from disclosure under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992). Thus, the system must withhold the employee W-4 form under section 552.101.

Social security numbers not otherwise confidential may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the system should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990.

Furthermore, you claim that, for those employees who did not make a timely election to keep the information confidential, the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members are confidential in this case under section 552.101.² In prior decisions, this office has held that information may be withheld from disclosure under section 552.101 in conjunction with the common-law right to privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). This office considers "special circumstances" to refer to a very narrow set of situations in which the release of information would likely cause someone to face "an imminent threat of physical danger." *Id.* at 6. Such "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* In this case we find that you have demonstrated an imminent physical danger that would constitute such "special circumstances." Therefore, the system must withhold employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members even if those employees did not make a timely election under section 552.024.

Finally, you argue that the information submitted in Tab 7 is protected from disclosure under section 552.107. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). You state that the document contains a written summary of verbal legal advice rendered by an attorney to the client. Based upon our careful review of your arguments and the submitted information, we find that the information at issue reflects either confidential communications from a client to an attorney or an attorney's legal advice or opinions. *See id.* at 6 (notes in

²Section 552.101 also encompasses the doctrine of common-law privacy.

attorney's client file covered under predecessor statute if they contain confidences of client or reveal opinions, advice, or recommendations made to client). We conclude, therefore, that the information in Tab 7 may be withheld from public disclosure under section 552.107.

To summarize: The system must withhold employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members under sections 552.101 and 552.117. The system must withhold those portions of the records that reveal an officer's home address and telephone number, social security number, and any information that reveals whether the officer has family members under section 552.117(2). The Texas driver's license number must be withheld under section 552.130, and the e-mail addresses which you have marked must be withheld under section 552.137. Employee W-4 forms are excepted from disclosure under section 552.101 in conjunction with federal law. Prior to releasing any social security number information, the system should ensure that no such information was obtained or is maintained pursuant to any provision of law, enacted on or after October 1, 1990. The information in Tab 7 may be withheld from public disclosure under section 552.107.

Open Records Letter No. 2002-2083 is overruled to the extent it conflicts with this current ruling.

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.

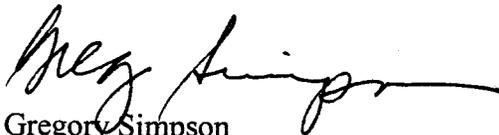
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



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Assistant Attorney General
Open Records Division

GTS/CMN/seg

Ref: ID# 161783

c: Mr. Michael Hernandez
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