



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 29, 2004

Ms. Valerie Coleman-Ferguson  
Assistant General Counsel  
Office of the General Counsel  
University of Houston System University of Houston  
311 E. Cullen Building  
Houston, Texas 77204-2028

OR2004-10898

Dear Ms. Coleman-Ferguson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 216137.

The University of Houston (the "university") received a request for information pertaining to a specified university employee's fringe benefits. The requestor also asks the university several questions in her request.<sup>1</sup> You state that the requestor subsequently clarified that she was seeking documents that reflect the employee's income and fringe benefits for a certain period of time. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used). You also state that some of the requested information is being provided to the requestor. You claim that most of the remaining requested information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have

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<sup>1</sup> We note that the Public Information Act (the "Act") does not require a governmental body to prepare answers to questions posed by a requestor. *See* Open Records Decision No. 555 at 1-2 (1990) (considering request for answers to fact questions). However, a governmental body must 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 No. 561 at 8 (1990). We, therefore, presume that the university has made the required good-faith effort to relate the requestor's questions to information that is within the university's custody or control.

considered the exception you claim and have reviewed the submitted representative sample documents.<sup>2</sup>

Initially, we note, and you acknowledge, that social security numbers that are contained within the submitted information are not responsive to the request for information. Accordingly, this ruling does not address the public availability of these particular numbers and they need not be released to the requestor in response to this ruling.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.<sup>3</sup> Information is protected from disclosure by the common-law right of privacy if (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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976); *see also* Open Records Decision No. 611 at 1 (1992). We note that prior decisions of this office have found that financial information relating only 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. *See* Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). For example, a public employee's allocation of his salary to a voluntary investment program or to optional insurance coverage which is offered by his employer is a personal investment decision and information about it is protected from disclosure by the common-law right to privacy. *See* Open Records Decision Nos. 600 (1992) (finding federal tax Form W-4 Employee's Withholding Allowance Certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care related to personal financial decisions), 545 (1990) (deferred compensation plan). However, information revealing that an employee participates in a group insurance plan funded partly or wholly by the governmental body is not protected from disclosure by the common-law right to privacy. *See* Open Records Decision No. 600 at 10 (1992).

After carefully considering your arguments and reviewing the remaining submitted information, we are unclear about the extent to which the deductions made by the individual

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<sup>2</sup> 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 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.

<sup>3</sup> Section 552.101 of the Government Code excepts information from disclosure that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

who is the subject of this request for information were mandatory or voluntary. Thus, we must rule in the alternative. To the extent that the information that we have marked concerns voluntary deductions made by the person who is the subject of this request, then the university must withhold this particular marked information pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. However, to the extent that such information concerns mandatory deductions made by this employee, then the university may not withhold such information under section 552.101 in conjunction with the common-law right to privacy and, thus, must release it to the requestor. In any event, the university must release the remainder of the submitted information 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 Dep't of Pub. 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,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 216137

Enc. Marked documents

c: Ms. Susan B. Jimenez  
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(w/o enclosures)