



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 12, 2005

Mr. Dan Junell
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2005-08278

Dear Mr. Junell:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231988.

The Teacher Retirement System of Texas (the "system") received two requests for information pertaining to the travel expenses of system trustees. You state that you have released some information to the requestor but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.117, 552.136, 552.137, 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information, some of which consists of representative samples.²

Initially, you note that a portion of the submitted information is not responsive to the request at issue. Accordingly, this ruling does not address the public availability of any information that is not responsive to the request, and the system is not required to release the information it has marked with green highlighter, in response to this request. See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San

¹Although you assert that some of the submitted information is excepted under section 552.024 of the Government Code, this section does not serve as an exception to disclosure. Section 552.024 only provides the manner in which an individual may choose to keep information confidential for purposes of section 552.117 of the Government Code. See Gov't Code § 552.024.

²We 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.

Antonio 1978, writ dismiss'd); Open Records Decision Nos. 605 at 2 (1992), 555 at 1 (1990), 452 at 3 (1986), 362 at 2 (1983).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by the common-law right to privacy. Information is protected from disclosure by the common-law right to privacy 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. *See id.* The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from required public disclosure under common-law privacy. Open Records Decision Nos. 545 (1990), 523 (1989) (individual's mortgage payments, assets, bills, and credit history). After reviewing the submitted information, we find that portions are protected from disclosure under the common-law right to privacy. We have marked the information that the system must withhold pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

You also argue that the submitted tax identification number is excepted under section 552.101. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). The tax identification number in the submitted information does not fall under the definition of tax return information. *See id.* We conclude, therefore, that the system may not withhold the tax identification number under section 552.101 of the Government Code as information deemed confidential by federal statute.

You also note that the submitted information contains the personal information of system officials. Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who timely request that such information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

You have submitted the officials' election forms in which they timely elected to not allow public access to these types of information in accordance with the procedures of section 552.024 of the Government Code. Therefore, we agree that the system must withhold the personal information you have marked, as well as the additional information we have marked, under section 552.117(a)(1).³

You also note that the submitted information includes credit card and account numbers. Section 552.136 of the Government Code provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. You must withhold the credit card and account numbers that we have marked pursuant to section 552.136.

You also note the e-mail addresses of members of the public in the submitted documents. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public" but is instead the address of the individual as a government employee. The e-mail addresses at issue in the remaining submitted information do not appear to be of a type specifically excluded by section 552.137(c). Therefore, in accordance with section 552.137, the system must withhold the marked e-mail addresses unless the system receives consent to release them.

³As our ruling under section 552.117 is dispositive of the submitted social security numbers, we do not address your section 552.147 claim.

In summary, the system must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The personal information of system officials that we have marked must be withheld under section 552.117(a)(1) of the Government Code. The credit card numbers that we have marked must be withheld under section 552.136 of the Government Code. The marked e-mail addresses must be withheld under section 552.137 of the Government Code. The remaining submitted information must be released to the requestors.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

A handwritten signature in black ink that reads "L. Joseph James". The signature is written in a cursive style with a large initial "L" and a long, sweeping underline.

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/krl

Ref: ID# 231988

Enc. Submitted documents

c: Robert Elder
Austin American Statesman
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(w/o enclosures)