ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2005

Mr. Eric Bentley
Assistant General Counsel
University of Houston
311 East Cullen Building
Houston, Texas 77204-2028

OR2005-08857

Dear Mr. Bentley:

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# 233271.

The University of Houston (the "university") received a request for nine categories of information pertaining to employees "who are permitting their names and addresses to be released." You claim that the submitted information revealing an employee's decision to participate in a tax deferred annuity plan ("TDA") and an employee's choice of vendor in a tax sheltered annuity plan ("TSA") is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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 it encompasses the doctrine of common law privacy. Common law privacy protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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, information related to an individual's mortgage payments, assets, bills, and credit history is generally protected by the common law right to privacy. *See* Open Records Decision Nos. 545, 523 (1989); *see also*

Open Records Decision No. 600 (finding personal financial information to include choice of particular insurance carrier).

The submitted information consists of a spreadsheet of the requested information, and two of these spreadsheet categories are titled "TSA Plan" and "Vendor." You inform us that the university sponsors two TSA plans: optional retirement programs ("ORP") and TDAs. You explain that "[i]n general, TDAs are funded primarily through salary reduction agreements whereby employees choose to reduce their annual gross salary by contributing a fixed monthly amount to the employee's ORP account, which results in the employee's incomes taxes being calculated based on the reduced annual gross income." The TSA Plan column reveals whether an employee elected to participate in a TDA, and the Vendor column reveals the vendor or carrier that an employee personally chooses in connection with the employee's participation in a TSA plan.

Upon review of your arguments and the submitted information, we agree that an employee's decision to participate in a TDA and the choice of vendor for any type of TSA plan are personal financial decisions. We do not believe the public has a legitimate interest in these types of financial decisions. *See* Open Records Decision Nos. 620 (1993), 600 (1992). Thus, we conclude that the submitted information revealing whether an individual is participating in a TDA plan and the choice of vendor of any type of TSA plan, a representative sample of which we have marked, is confidential under common law privacy, and the university must withhold this information pursuant to section 552.101. The university must release the remaining information at issue.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 233271

Enc. Submitted documents

c: Mr. Bruce Pullen
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(w/o enclosures)