



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2005

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

OR2005-10348

Dear Ms. Longoria:

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# 236441.

The University of Texas at El Paso (the "university") received a request for information related to a named university police officer and any inquiries made on the requestor's university police records. You state that the university does not have information related to any inquiries made on the requestor's university police records.¹ You indicate that you will release some of the submitted information, but claim that the remainder of the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you indicate that the university intends to withhold certain information relating to the named officer pursuant to a previous determination issued by this office in Open Records Decision No. 670 (2001). In that decision, we determined that a governmental body may withhold the home address, home telephone number, personal cellular phone number, personal pager number, social security number, and information that reveals whether the

¹We note the Act does not require a governmental body to disclose information that did not exist when the request for information was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

individual has family members, of any individual who meets the definition of “peace officer” set forth in article 2.12 of the Texas Code of Criminal Procedure or “security officer” in section 51.212 of the Texas Education Code, without the necessity of requesting an attorney general decision as to the applicability of the section 552.117(a)(2) of the Government Code exception. *See* Open Records Decision No. 670 (2001); *see also* Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination under section 552.301(a)). We therefore agree that the university must withhold the officer’s home address and personal telephone numbers pursuant to the previous determination in Open Records Decision No. 670.

We now turn to your claimed exceptions against disclosure. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses laws that make criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI, but a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-411.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Based on our review of the submitted information, we find that it does not contain any CHRI obtained from the NCIC or TCIC network. Consequently, none of the submitted information may be withheld on that basis.

Section 552.101 also 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). 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.

Id. at 683. Information may also be withheld under section 552.101 in conjunction with common law 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.* However, this office has found that the public has a legitimate interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). You contend that the named officer’s list of affiliations and outside interests, as they appear on the submitted employment application, should be withheld under the doctrine of common law privacy.

After review of the submitted information and your arguments, we find that you have not demonstrated that any of the submitted information is highly intimate or embarrassing. Furthermore, we find that the public has a legitimate interest in the submitted information because it concerns the named officer’s qualifications for employment. Therefore, the university may not withhold any portion of the submitted information under the general doctrine of common law privacy.

You also assert that the named officer’s list of affiliations and outside interests, as well as his electronic identification number, should be protected based on special circumstances. We note that this office has previously permitted the university to withhold various university employees’ personal information from this requestor based on special circumstances. In those cases, the university made specific arguments demonstrating that release of that personal information would cause those employees to face an imminent threat of physical danger. In this instance, however, we find that you have not established that release of the officer’s list of affiliations, outside interests, and electronic identification number would likely cause the officer to face an imminent threat of physical danger. Accordingly, this information may not be withheld under special circumstances.

You also claim that the named officer’s list of affiliations, outside interests, and electronic identification number are protected under the doctrine of constitutional privacy. Constitutional privacy, which is also encompassed by section 552.101, consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently; and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected under constitutional privacy is narrower than that under the common law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of*

Hedwig Village, 765 F.2d 490 (5th Cir. 1985)). We have considered your arguments and reviewed the information at issue. We conclude, however, that you have not shown that any of this information comes within one of the constitutional zones of privacy or involves the most intimate aspects of human affairs. *See* Open Records Decision Nos. 470, 455, 444, 423 at 2. We therefore conclude that it may not be withheld under section 552.101 on the basis of constitutional privacy.

Next, you assert that the officer's electronic identification number is excepted under section 552.136 of the Government Code. This section 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 state that the electronic identification number is an access device number "used for transacting employee specific business." However, we find that you have failed to establish that the electronic identification number constitutes an access device number for purposes of section 552.136. Therefore, it may not be withheld on that basis.

Next, we address your claim under section 552.137 of the Government Code. This section 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). The e-mail address you have marked does not appear to be of a type specifically excluded by section 552.137(c). Therefore, the university must withhold this e-mail address in accordance with section 552.137 unless the university receives consent for its release.

In summary, the university must withhold the officer's home address and personal telephone numbers pursuant to the previous determination in Open Records Decision No. 670. The university must also withhold the e-mail address you have marked under section 552.137 of the Government Code. The remaining information must be released.

You request that this office issue a previous determination which would allow the university to withhold a portion of its employees' personal information from this requestor. You also ask for a previous determination which would state that the university need not respond to a request from this requestor for information related to inquiries made on the requestor's university police records. We decline to issue such rulings at this time. Therefore, 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, appearing to read 'JAP', written over a light blue horizontal line.

James A. Person III
Assistant Attorney General
Open Records Division

JAP/sdk

Ref: ID# 236441

Enc. Submitted documents

c: Mr. Michael Hernandez
8501 Lee Starling
El Paso, Texas 79907
(w/o enclosures)