ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 25, 2006

Mr. Renaldo L. Stowers
Associate General Counsel
University of North Texas System
Office of the General Counsel
P. O. Box 310907
Denton, Texas 76203-0907

OR2006-12615

Dear Mr. Stowers:

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# 263748.

The University of North Texas (the "university") received a request for all information pertaining to a named university police officer. You indicate that the university has released some of the requested information, but we understand you to claim that the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.130, and 552.136 of the Government Code.[1] We have considered the exceptions you claim and reviewed the submitted representative sample of information.[2]

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 that other statutes make confidential. *See* Gov't Code § 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

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[1]Although you also cite sections 552.102, 552.114 and 552.119 of the Government Code in your brief to this office, you have not submitted any arguments explaining how these sections apply to the submitted information. We therefore assume the university is no longer claiming these exceptions. *See* Gov't Code §§ 552.301, .302.

[2]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.

(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 Internal Revenue Service 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 submitted W-4 form constitutes tax return information that must be withheld under section 552.101 of the Government Code in conjunction with federal law.

The submitted information also contains an I-9 form (Employment Eligibility Verification), which is governed by section 1324a of Title 8 of the United States Code. This section provides that an I-9 form and "any information contained in or appended to such form, may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). Release of the form in this instance would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the I-9 form is confidential for purposes of section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

Also, the submitted L-3 Declaration of Psychological and Emotional Health required by the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") is confidential under section 1701.306 of the Occupations Code. Chapter 1701 of the Occupations Code is applicable to TCLEOSE. Specifically, section 1701.306 provides as follows:

> (a) The commission may not issue a license to a person as an officer or county jailer unless the person is examined by:
>
> > (1) a licensed psychologist or by a psychiatrist who declares in writing that the person is in satisfactory psychological and emotional health to serve as the type of officer for which a license is sought; and
> >
> > (2) a licensed physician who declares in writing that the person does not show any trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test.
>
> (b) An agency hiring a person for whom a license as an officer or county jailer is sought shall select the examining physician and the examining psychologist or psychiatrist. The agency shall prepare a report of each declaration required by Subsection (a) and shall maintain a copy of the report on file in a format readily accessible to the commission. A declaration is not public information.

Occ. Code § 1701.306(a), (b). Therefore, the university must withhold the submitted declaration under section 552.101 in conjunction with section 1701.306 of the Occupations Code.[3]

Section 552.101 also encompasses the doctrine of common-law privacy, which 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). This office has found that information that reflects an individual's personal financial decisions and is not related to a financial transaction between the individual and a governmental body is generally excepted from disclosure under common-law privacy. Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). Upon review, we agree that the personal financial information we have marked must be withheld under section 552.101 in conjunction with common-law privacy.[4] However, we find that none of the remaining information is protected by common-law privacy, and none of it may therefore be withheld under section 552.101 on that basis.

Section 552.117(a)(2) excepts from disclosure the current and former home address, home telephone number, personal cellular telephone number, social security number, and family member information of a peace officer, regardless of whether the officer made an election under section 552.024 or 552.1175.[5] Gov't Code § 552.117(a)(2). Based on our review, we find that the university must withhold under section 552.117(a)(2) the information we have marked pertaining to the university police officer.

Next, section 552.130 of the Government Code excepts from disclosure information that relates to a driver's license or motor vehicle title or registration issued by an agency of this state. *Id.* § 552.130. Upon review, we agree that the university must withhold under section 552.130 the motor vehicle record information we have marked.

Lastly, the remaining information contains an insurance policy number. Section 552.136 of the Government Code states that "[n]otwithstanding 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." *Id.* § 552.136. We agree that the

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[3]As we reach this determination, we need not address your remaining argument for this information.

[4]As we reach this conclusion, we need not address your remaining arguments for this information.

[5]"Peace Officer" is defined by article 2.12 of the Code of Criminal Procedure.

insurance policy number we have marked must be withheld in accordance with section 552.136.

In summary, the university must withhold under section 552.101 of the Government Code the W-4 form, the I-9 form, the L-3 Declaration of Psychological and Emotional Health, and the marked personal financial information. The university must also withhold the information we have marked under sections 552.117(a)(2), 552.130, and 552.136 of the Government Code. The remaining submitted information must be released.

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 ten 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).

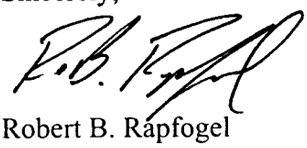
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/eb

Ref: ID# 263748

Enc. Submitted documents

c: Mr. John Zachary Rainey
425 Bernard Street, Apartment 505
Denton, Texas 76201
(w/o enclosures)