



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2008

Ms. Tammye Curtis-Jones
Office of General Counsel
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

OR2008-12997

Dear Ms. Curtis-Jones:

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#322318.

Texas Southern University (the "university") received a request for eight categories of information regarding the president of the university. You state that you have released a portion of the requested information. You claim that some of the remaining information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information is subject to chapter 572 of the Government Code. This chapter requires the mandatory filing of annual personal financial statements by certain "state officers" with the Texas Ethics Commission and designates those statements as public records. Gov't Code § 572.021 ("a state officer . . . shall file with the [Texas Ethics C]ommission a verified financial statement complying with Sections 572.022 through 572.0252"); *id.* § 572.032 ("Financial statements filed under this

¹Although you initially raise section 552.137 of the Government Code, you provide no supporting arguments explaining why this exception is applicable to the information at issue. Thus, we have no basis for finding the information at issue confidential under that exception. See Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

subchapter are public records.”). Under section 572.002, the president of a public senior college or university is included in the definition of a “state officer” for the purposes of this chapter. *Id.* § 572.002(5), (12). Accordingly, the submitted personal financial statement, which has been filed with the Texas Ethics Commission by the university’s president in accordance with chapter 572 of the Government Code, is expressly made public by statute. We note that the statement contains personal financial information that might otherwise be protected from disclosure. However, information expressly made public by statute may not be withheld pursuant to exceptions to required disclosure provided in the Act. *See id.* § 311.026 (where a general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision); *see also* Open Records Decision Nos. 623 (1994), 525 (1989) (as a general rule, Act’s exceptions do not apply to information made public by other statutes). Thus, we determine that the personal financial statement belonging to the “state officer” at issue is expressly public under section 572.032 of the Government Code. Therefore, the university may not withhold the submitted personal financial statement filed with the Texas Ethics Commission in accordance with chapter 572 of the Government Code.

Next, we address your arguments against disclosure of the remaining 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.” Gov’t Code § 552.101. This section encompasses the doctrine of common-law privacy. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” *Id.* § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668, 683-85 (Tex. 1976), for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. Accordingly, we will consider your common-law privacy claim under both sections 552.101 and 552.102 of the Government Code.

Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. The types 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. This office has also found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee’s designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pre-tax

compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, that this office has generally 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 assert that some of the marked information is confidential under common-law privacy. However, we determine that you have not demonstrated that any of the remaining information is highly intimate or embarrassing information of no legitimate public interest. Therefore, it cannot be withheld on the basis of common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Section 552.117 also encompasses a personal cellular telephone number, provided that the cellular phone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (stating that section 552.117 is not applicable to mobile phone numbers paid for by a governmental body and intended for official use). The question of whether section 552.117 is applicable to a piece of information must be determined at the time the request for such information is received. *See* Open Records Decision No. 530 at 5 (1989). Thus, the university may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for information was received. We have marked information belonging to the university's president. To the extent the president timely elected to withhold this information under section 552.024, the university must withhold the information we have marked pursuant to section 552.117(a)(1). To the extent the president did not make a timely election, this information must be released.

Finally, you seek to withhold employee and vendor identification numbers, credit card information, account numbers, fund numbers, and organization codes under section 552.136. Section 552.136 of the Government Code states:

(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. The university must withhold the credit card numbers and account numbers we have marked pursuant to section 552.136. However, the university has failed to demonstrate how any of the remaining information constitutes an access device number for the purposes of section 552.136, and therefore, none of the remaining information can be withheld on this basis.

In summary, the personal financial statement must be released in its entirety pursuant to section 572.032 of the Government Code. To the extent the president timely elected to withhold his personal information under section 552.024, the university must withhold the information we have marked pursuant to section 552.117(a)(1). To the extent the president did not make a timely election, this information must be released. The university must withhold the marked credit card numbers and account numbers pursuant to section 552.136. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Christina Alvarado
Assistant Attorney General
Open Records Division

CA/mcf

Ref: ID#322318

Enc. Submitted documents

c: Mr. Jim Thompson
African-American Legal Defense Group
P.O. Box 91212
Houston, Texas 77291-1212
(w/o enclosures)