



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 8, 2009

Mr. Brian S. Nelson  
General Counsel for Lone Star College System  
and Lone Star College System Foundation  
5000 Research Forest Drive  
The Woodlands, Texas 77381-4356

OR2009-00054A

Dear Mr. Nelson:

This office issued Open Records Letter No. 2009-00054 (2009) on January 5, 2009 and Open Records Letter No. 2009-00115 (2009) on January 6, 2009. In Open Record Letter No. 2009-00054, we determined the Lone Star College System Foundation (the "foundation") was not a governmental body as defined by section 552.003 of the Government Code. In Open Records Letter No. 2009-00115, we determined the submitted information was not related to financial transactions between individuals and a governmental body, and therefore, the information was excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. However, this office had previously determined that the foundation, under a different name, was a governmental body under the Public Information Act (the "Act"), chapter 552 of the Government Code. *See* Open Records Letter No. 2007-06266. Accordingly, we determine that Open Records Letter Nos. 2009-00054 and 2009-00115 are incorrect. Where this office determines that an error was made in the decision process under sections 552.301 and 552.306, and that the error resulted in an incorrect decision, we will correct the previously issued ruling. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of the Act). Consequently, this decision serves as the correct ruling and is a substitute for the decisions issued on January 5, 2009 and January 6, 2009.

You ask whether certain information is subject to required public disclosure under the Act (the "Act"). Your request was assigned ID# 345605.

The foundation and the Lone Star College System (the "system," collectively "Lone Star") received a request for information relating to emergency funding provided to students and staff of Lone Star who were affected by Hurricane Ike. You state you have released a

portion of the requested information and are withholding social security numbers under section 552.147 of the Government Code.<sup>1</sup> You also state Lone Star is withholding some information pursuant to the Family Educational Rights and Privacy Act ("FERPA").<sup>2</sup> You also state you do not have a portion of the requested information.<sup>3</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.<sup>4</sup> We have considered the exceptions you claim and reviewed the information you have submitted. We have also received and considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that any person may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information protected by common-law privacy. For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). This office has also found that personal financial information not related to a financial transaction between an individual and a

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<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

<sup>2</sup>We note that the United States Department of Education Family Policy Compliance Office (the "DOE") informed this office that FERPA, 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>3</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the governmental body. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

<sup>4</sup>While you cite to section 552.024 of the Government Code for your argument to withhold the home addresses, home telephone numbers, social security numbers, and family member information of the system's employees, we understand you to raise section 552.117 of the Government Code, as section 552.117 is the proper exception for the substance of your argument.

governmental body is intimate and embarrassing. *See* 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, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). You seek to withhold the entirety of the submitted information under section 552.101 in conjunction with common-law privacy. We note the submitted loan application forms relate to financial transactions between an individual and a governmental body. Thus, Lone Star may not withhold the submitted information in its entirety under section 552.101 in conjunction with common-law privacy. However, upon review, we find portions of the submitted information are highly intimate or embarrassing and not of legitimate public interest. Thus, Lone Star must withhold this information, which we have marked, under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code exempts from disclosure the home addresses and 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 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. We note that a post office box number is not a "home address" for purposes of section 552.117.<sup>5</sup> We also note that section 552.117 encompasses a personal cellular telephone number, unless the service is paid for by a governmental body. *See* Open Records Decision Nos. 670 at 6 (2001), 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cell phone numbers provided and paid for by governmental body and intended for official use). 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). Lone Star may only withhold information under section 552.117(a)(1) on behalf of former or current employees who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. To the extent the employees whose personal information we have marked timely elected to withhold their personal information under section 552.024, this marked information must be withheld under section 552.117(a)(1); however, Lone Star may only withhold the marked cellular telephone number if the employee at issue paid for the cellular telephone with her own funds. To the extent the employees did not timely elect confidentiality, the marked information may not be withheld under section 552.117(a)(1).

We note the remaining information includes e-mail addresses subject to section 552.137 of the Government Code, which exempts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental

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<sup>5</sup>*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of section 552.117 is to protect public employees from being harassed at home) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

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).<sup>6</sup> *See id.* § 552.137(a)-(c). Lone Star must withhold the e-mail addresses we have marked under section 552.137, unless the owners of the e-mail addresses have affirmatively consented to their release.

In summary, Lone Star must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. Lone Star must withhold the marked personal information under section 552.117(a)(1) unless the employees at issue did not timely elect confidentiality. Lone Star must withhold the e-mail addresses we have marked under section 552.137 unless the owners of these e-mail addresses have affirmatively consented to their disclosure. The remaining information must be released.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/sdk

Ref: ID# 345605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>6</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).