



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

October 5, 2009

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845-3424

OR2009-14032

Dear Mr. Kelly:

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# 357450.

The Texas Engineering Extension Service ("TEEX"), a component agency of the Texas A&M University System (the "system"), received a request for all information relating to or evidencing payments made by or currently due from TEEX and the system to EOG Environmental Group, Inc. ("EOG"), including information relating to or evidencing payments with respect to the "fire training school pond cleanout project" and any agreements or contracts between the system, TEEX, and EOG. You claim that the requested information is excepted from disclosure under sections 552.101, 552.116, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

¹We 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.

Initially, we note that TEEX has not submitted any information responsive to the portion of the request seeking any agreements or contracts between the system, TEEX, and EOG. To the extent information responsive to this portion of the request existed on the date TEEX received this request, we assume you have released it. If you have not released any such information, you must do so at this time. See Gov't Code §§ 552.301(a), .302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, you claim that a portion of the information you have marked in Exhibit B-1 is excepted from disclosure under common-law privacy. 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 the doctrine of common-law privacy, which protects information that (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 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 found that 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 No. 470 (1987) (illness from severe emotional and job-related stress). Upon review, we agree that the information you have marked in Exhibit B-1, in addition to the information we have marked, is highly intimate and embarrassing and not of legitimate public interest. Thus, this information must be withheld under section 552.101 in conjunction with common-law privacy.

You claim the remaining information you have marked in Exhibit B-1 is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the current and former 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 this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). TEEX may only withhold information under section 552.117(a)(1) 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 this information was made. You state the employee whose information is at issue timely chose to not allow public access to his personal information. Accordingly, TEEX must withhold the information you have marked pursuant to section 552.117(a)(1) of the Government Code.

You claim that Exhibit B-2 is excepted from disclosure under section 552.116 of the Government Code, which provides:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. You inform this office that Exhibit B-2 consists of e-mail correspondence between TEEX administrators and the Manager of Investigative Audit Services for the system's Internal Audit Department (the "department"). You explain that the information at issue consists of audit working papers pertaining to an audit investigation into alleged impropriety reported to the department. You state the audit was prepared pursuant to chapter 2102 of the Government Code. *See id.* § 2102.003 (relating to the duties of an internal auditor). You further explain that the audit was authorized under chapter 321 of the Government Code. *See id.* § 321.0136 ("An investigation is an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds, or into specified financial transactions or practices that may involve such impropriety, malfeasance, or nonfeasance."). Based on your

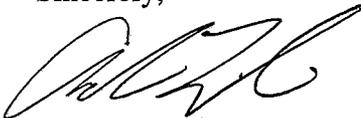
representations and our review of the information at issue, we agree that section 552.116 is applicable in this instance. We therefore conclude that TEEEX may withhold Exhibit B-2 pursuant to section 552.116 of the Government Code.

In summary, TEEEX must withhold from Exhibit B-1: (1) the information you have marked, in addition to the information we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy, and (2) the information you have marked under section 552.117(a)(1) of the Government Code. TEEEX may withhold Exhibit B-2 under section 552.116 of the Government Code. The remaining information in Exhibit B-1 must be released to the requestor.

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, 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, toll free, at (888) 672-6787.

Sincerely,



Adam Leiber
Assistant Attorney General
Open Records Division

ACL/rl

Ref: ID# 357450

Enc. Submitted documents

c: Requestor
(w/o enclosures)