



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

January 7, 2010

Ms. Neera Chatterjee
Public Information Coordinator
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-00324

Dear Ms. Chatterjee:

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# 364931 (OGC# 121549).

The University of Texas System (the "university") received a request for information related to a specified trip made by two named university officials. You state that the university will release some responsive information. You also state that the university will withhold certain information pursuant to section 552.024 of the Government Code.¹ You claim that a portion of the submitted information is not subject to the Act or, alternatively, is excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.137 of the Government Code; you also claim that portions of the remaining information at issue are excepted from disclosure under sections 552.101, 552.117, 552.136, and 552.137. We have considered your arguments and reviewed the submitted representative sample of the requested information.²

¹Section 552.024 authorizes a governmental body to redact from public release a current or former official's or employee's home address, home telephone number, social security number, and information that reveals whether the person has family members without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. *See* Gov't Code 552.024(a)-(c).

²We 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.

The Act is applicable to "public information." See Gov't Code § 552.021. Section 552.002 of the Act provides that "public information" consists of "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). You inform us that the information you have marked as not subject to the Act relates solely to a university employee's family or personal life and assert that this information, therefore, is not maintained under a law or ordinance or in connection with the transaction of official university business. After reviewing the information at issue, we agree that the information you have marked does not constitute "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the university. See Gov't Code § 552.021; see also Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Therefore, we conclude that the information you have marked is not subject to the Act and need not be released in response to this request.³

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law and constitutional rights to privacy. The common-law right to privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. See *id.* at 681-82. The types of information considered intimate or 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. See *id.* at 683. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, see Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); personal financial information not relating to the financial transaction between an individual and a governmental body, see Open Records Decision Nos. 600 (1992), 545 (1990); and identities of victims of sexual abuse, see Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Constitutional privacy 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

³In light of this conclusion, we need not address your alternative arguments against disclosure of this information.

disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (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. ORD 455 at 4. 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.* at 7. The scope of information protected is narrower than that under the common-law doctrine of privacy; constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 5 (quoting *Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we agree that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. However, we find that the remaining information you have marked is not highly intimate or embarrassing or is of legitimate public concern, and does not reach "the most intimate aspects of human affairs." Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, but may not withhold any of the remaining information at issue under common-law or constitutional privacy.⁴

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. You have marked information that the university will redact under section 552.024, which authorizes a governmental body to redact from public release information subject to section 552.117 without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. *See* Gov't Code 552.024(a)-(c). We have marked additional information that the university must also withhold under section 552.117(a)(1), to the extent the employee concerned timely elected under section 552.024 to keep such information confidential.

You seek to withhold an e-mail address contained in the remaining submitted information pursuant to section 552.137 of the Government Code. Section 552.137 states that "an e-mail address of a member of the public that is provided for the purpose of communicating

⁴As this ruling is dispositive with regard to the information we have marked under section 552.101 in conjunction with common-law privacy, we need not address your remaining argument against disclosure of this information.

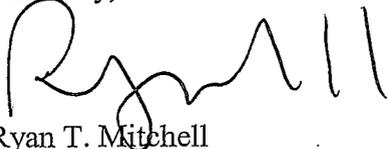
electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure. *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). The marked e-mail address does not appear to be of a type listed in section 552.137(c) and you do not indicate that the owner of this address has consented to release. Therefore, the university must withhold the marked e-mail address under section 552.137.⁵

In summary, (1) the information you have marked is not subject to the Act and is not addressed by this ruling, (2) the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (3) the university must withhold the information marked under section 552.117(a)(1), to the extent the employee concerned timely elected under section 552.024 to keep such information confidential, (4) the university must withhold the marked e-mail address under section 552.137, and (5) the university must release the rest of the submitted information.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/dls

⁵We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 364931

Enc. Submitted documents

c: Requestor
(w/o enclosures)