ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 2, 2010

Ms. Sandy Poel
Public Information Coordinator
Texas Guaranteed Student Loan Corporation
P.O. Box 83100
Round Rock, Texas 78683-3100

OR2010-16588

Dear Ms. Poel:

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# 398678.

The Texas Guaranteed Student Loan Corporation ("TG") received a request for seven categories of information, including information pertaining to three named employees and any employee who has had any connection with the requestor's account. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.117, 552.130, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your assertion that TG need not release information responsive to the portion of the request seeking information related to any employee who has been associated with the requestor's account because that information cannot be easily identified. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. This office has stated a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision Nos. 561 at 8-9 (1990), 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982), 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated the governmental body

may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974). A request for records made pursuant to the Act may not be disregarded simply because a citizen does not specify the exact documents he desires. ORD 87. We note if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision Nos. 561 at 8 (1990), 333 (1982). However, TG did not seek clarification from the requestor and did not submit to our office any information responsive to this portion of the request. Thus, to the extent any responsive information to this portion of the request existed when TG received the request for information, TG must release this information immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

Next, we must address the TG's procedural obligations under the Act. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Section 552.301(b) provides that a governmental body must ask for the attorney general's decision and claim its exceptions to disclosure no later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of the receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D).

You inform us TG received the instant request for information on August 16, 2010. Accordingly, your ten-business-day deadline was August 30, 2010, and your fifteen-business-day deadline was September 7, 2010. Due to inclement weather and traffic conditions, you requested a one-business-day extension of your fifteen-business-day deadline from our office via facsimile on September 7, 2010. However, the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1-2 (1988). Because you did not submit the responsive information or raise sections 552.117, 552.130, and 552.137 until September 8, 2010, we find TG failed to comply with the requirements of section 552.301(b) and section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the

information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. *See* Open Records Decision No. 150 at 2 (1977). Although you raise section 552.103 of the Government Code, this exception is discretionary in nature. Section 552.103 serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Accordingly, TG may not withhold the submitted information pursuant to section 552.103 of the Government Code. However, because sections 552.101, 552.117, 552.130, and 552.137 can provide a compelling reason to withhold information, we will consider the applicability of these exceptions to the submitted information.[1]

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. Section 552.101 encompasses the doctrine of common-law privacy, which excepts from public disclosure private information about an individual if the information (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 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 pretax 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). Upon review, we find that portions of the submitted information constitute personal financial information that is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the department must withhold the personal financial information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current

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[1]The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See id.* §§ 552.117(a)(1), .024. 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). We note that a post office box number is not a "home address" and therefore may not be withheld under section 552.117. TG may only withhold information under section 552.117(a)(1) on behalf of a former or current employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. We note the submitted information contains election forms for all three employees whose information is at issue. These elections forms reflect that, at the time TG received the request, the individuals whose information is at issue in Exhibits E and F elected to restrict access to their personal information under section 552.024. However, the election form for the individual whose information is at issue in Exhibit G reflects that she only elected to restrict access to her social security number. Accordingly, TG must only withhold the information we have marked under section 552.117(a)(1) of the Government Code, and no portion of the remaining information may be withheld under section 552.117(a)(1) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state[.]" Gov't Code § 552.130(a)(1), (2). Upon review, we agree TG must withhold the Texas driver's license numbers you have marked pursuant to section 552.130.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental 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). *See* Gov't Code § 552.137(a)-(c). You state the e-mail address listed in the submitted information is not specifically excluded by section 552.137(c). Upon review, we agree this e-mail address, which you have marked, must be withheld under section 552.137, unless the owner of the address has affirmatively consented to its release. *See id.* § 552.137(b).[2]

In summary, TG must withhold the personal financial information we have marked under section 552.101 in conjunction with common-law privacy. TG must withhold the information we have marked under section 552.117(a)(1) of the Government Code. TG must withhold the Texas driver's license numbers you have marked under section 552.130 of the Government Code. TG must withhold the personal e-mail address you have marked under

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[2]We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code and personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.137 of the Government Code, unless the owner of the address has affirmatively consented to its release. 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, 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,

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 398678

Enc. Submitted documents

c: Requestor
(w/o enclosures)