



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

March 25, 2011

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

OR2011-04138

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# 412456 (OGC# 134666).

The University of Texas System (the "system") received a request for specified administrative accountability reports. You state you have released some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party 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 the doctrine of common-law privacy, which 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, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. This office has found personal financial information not related to a financial transaction between an individual and a governmental body is highly intimate and embarrassing and of no legitimate public interest. 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) (information about employee decision to allocate salary to deferred compensation plan, to

participate in voluntary investment program, to elect optional insurance coverage, employee's mortgage payments, assets, bills, and credit history). However, because there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body, financial information related to such transactions is generally not excepted from disclosure. *See* Open Records Decision Nos. 600 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy), 373 (1983), 342 (1982). Whether financial information is subject to a legitimate public interest and therefore not protected by common-law privacy must be determined on a case-by-case basis. *See* Open Records Decision No. 373 (1983).

You assert certain payments to employees listed as "other" nonsalary benefits constitute personal financial information of these employees. You further assert the release of this information would be highly offensive to a reasonable person. The requestor, however, contends the information at issue pertains to these employees' additional income from the system and does not relate to the employees' decisions to transfer portions of their salaries into the system's deferred compensation plan for investment purposes. Pursuant to section 552.303 of the Government Code, we requested the system's response to the requestor's assertion the information at issue should be released because "it is a separate form of compensation provided by the [system to an employee] . . . and is not a transfer of a portion of his salary to the [deferred compensation] plan."<sup>1</sup> In response, you cite to Open Records Letter No. 2010-18816 (2010), in which this office ruled the system must withhold the category and amount labeled "Deferred Compensation" and the total compensation from employees salary and benefits summaries under section 552.101 of the Government Code in conjunction with common-law privacy. However, upon further consideration, we find such information is not excepted because the system failed to show such information relates to a personal financial decision of an employee unrelated to a financial transaction between an individual and a governmental body. Accordingly, upon review of the information at issue, we find you have failed to establish the receipt of "other" nonsalary benefits from the system by the employees at issue is an election on the part of an employee that reflects a personal financial decision. *See* ORD 600. We therefore conclude the information at issue represents additional compensation by the system and relates to a financial transaction between an individual and a governmental body. Information about the essential features of this transaction is therefore not excepted from disclosure by common-law privacy. *See id.* Accordingly, the system may not withhold any of the information you have marked under section 552.101 in conjunction with common-law privacy.

Section 552.101 also encompasses constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions

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<sup>1</sup>*See* Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

independently and (2) an individual's interest in avoiding disclosure of personal matters. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); Open Records Decision Nos. 600 at 3-5, 478 at 4 (1987), 455 at 3-7. 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 find you have failed to demonstrate how any of the information you have marked falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the system may not withhold any of the information you have marked under section 552.101 of the Government Code on the basis of constitutional privacy. As you raise no other argument against disclosure, the system must release the submitted information in its entirety.

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

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/em

Ref: ID# 412456

Enc. Submitted documents

c: Requestor  
(w/o enclosures)