



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 17, 2011

Ms. Zeena Angadicheril
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2011-08678

Dear Ms. Angadicheril:

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# 421103 (OGC# 136692).

The University of Texas at San Antonio (the "university") received a request for the personnel files of three named employees. You state the university will release some information to the requestor. You state you will redact certain information in accordance with Open Records Letter No. 684 (2009).¹ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹This office issued Open Records Decision No. 684, a previous determination to all governmental bodies, which authorizes the withholding of ten categories of information, including: a direct deposit authorization form under section 552.101 of the Government Code in conjunction with the common-law right to privacy; a Form I-9 under section 552.101 in conjunction with section 1324a of title 8 of the United States Code; a W-4 form under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code; a Texas driver's license number under section 552.130 of the Government Code; a bank account number, bank routing number, and an insurance policy number under section 552.136 of the Government Code; and 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.

²We assume the "representative sample" of information 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 those records contain substantially different types of information than those submitted to this office.

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 protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *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 personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600* (1992) (finding personal financial information to include designation of beneficiary of employee’s retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and 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 the personal financial information we have marked is not of legitimate public interest. Thus, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, you have failed to demonstrate that the remaining information you have marked is highly intimate or embarrassing and not of legitimate public interest. Therefore, none of the remaining information you have marked may be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. You assert the remaining information is protected under constitutional privacy, which 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 disclosure of personal matters. *Open Records Decision No. 455* at 4 (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. *Id.* 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.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, you have not demonstrated how constitutional privacy applies to any of the remaining information.

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

Accordingly, the university may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the remaining information, we agree the information you have marked, and the additional information we have marked, must be withheld under section 552.102(a) of the Government Code.

You state that, as permitted by section 552.024(c) of the Government Code, the university will redact information subject to section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former 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 timely requests that such information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). The university may only withhold information under section 552.117(a)(1) on behalf of an 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 that a post office box number is not a "home address" for purposes of section 552.117.⁴ You have provided documentation showing that one of the university employees at issue timely elected confidentiality for her personal information under section 552.024. Thus, except for the post office box numbers, which we have marked for release, the university must withhold the personal information of this employee you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. We note, however, you have provided documentation showing another of the named employees did not elect confidentiality for his home address or home telephone number. As such, the university may not withhold the home address of this employee, which we have marked for release, under section 552.117(a)(1) of the Government Code.

You claim a portion of the remaining information is subject to section 552.136 of the Government Code, which provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). However, you have not

⁴*See* Gov't Code § 552.117; Open Records Decision No. 622 at 4 (1994) (legislative history makes clear that purpose of Gov't Code § 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); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)) (emphasis added).

explained, and we cannot discern, how any of the remaining information contains a credit card, debit card, or charge card number or can be used to obtain money, goods, services, or another thing of value or initiate a transfer of funds. Thus, we find none of the remaining information constitutes information that must be withheld under section 552.136 of the Government Code, and the university may not withhold any of the remaining information on that basis.

In summary, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the information you have marked, and the additional information we have marked, under section 552.102(a) of the Government Code. Except for information we have marked for release, the university must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code. The remaining information 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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/bs

Ref: ID# 421103

Enc. Submitted documents

c: Requestor
(w/o enclosures)