



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 1, 2011

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

OR2011-12735

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# 428702 (OGC# 138110).

The University of Texas Medical Branch at Galveston (the "university") received a request for a named individual's employee file, e-mails sent between the named individual and two other named employees, and the investigation into the named individual's death. You state the university will release some of the requested information, with redactions pursuant to Open Records Decision No. 684 (2009).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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. Section 552.101 encompasses section 51.971 of the Education Code, which provides:

¹We note this office issued Open Records Decision No. 684, which serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information without the necessity of requesting an attorney general decision.

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

(e) Information is excepted from disclosure under [the Act], if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation; or

(2) by a systemwide compliance office for the purpose of reviewing compliance processes at a component institution of higher education of a university system.

Act of May 17, 2011, 82nd Leg., R.S., S.B. 1327, § 1 (to be codified at Educ. Code § 51.971(e)). Section 51.971 defines a compliance program as a process to assess and ensure compliance by officers and employees of an institution of higher education. Educ. Code § 51.971(a)(1). You state the information you marked pertains to an open and ongoing compliance investigation by the university's Human Resources Department into the standard of conduct of employees in the university's Research Services Department. Based on your representations and our review, we agree the information you marked pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You explain the release of this information would interfere with the investigation because it would make it more difficult for the university to obtain accurate information from the individuals who are relevant to the investigation. Thus, we conclude the release of this information would interfere with an ongoing compliance investigation. Therefore, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971(e) of the Education Code.

Section 552.101 also 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. This office has found 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). However, we note privacy is a personal right that lapses at death, and, thus, common-law privacy is not applicable to information that relates only to a deceased individual. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.—Texarkana 1979, writ ref'd n.r.e.); *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145 (N.D. Tex. 1979); Attorney General Opinions JM-229 (1984); H-917 (1976); Open Records Decision No. 272 (1981).

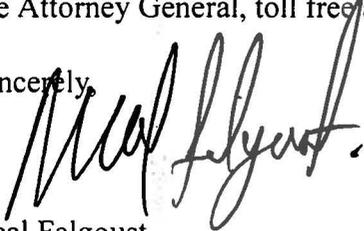
The remaining information consists of insurance elections, beneficiary designations and a mortgage document. Generally, we find this type of information is private financial information that is excepted from disclosure under common-law privacy pursuant to section 552.101. In this instance, however, we note the information pertains to an individual who is deceased. Thus, the deceased individual's right to privacy has lapsed, and the information may not be withheld on the basis of her right to privacy. *See Moore*, 589 S.W.2d at 491. However, the beneficiaries of an insurance policy and a surviving co-borrower have a separate right to privacy. Therefore, information that reveals the beneficiary's identity is protected by common-law privacy. Likewise, the surviving co-borrower has a privacy interest in the mortgage document. Upon review, we find the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³

In summary, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/agn

³As our ruling is dispositive, we do not address your remaining argument under constitutional privacy for this information.

Ref: ID# 428702

Enc. Submitted documents

c: Requestor
(w/o enclosures)