



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2011

Mr. R. Brooks Moore
Assistant General Counsel
Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2011-12838

Dear Mr. Moore:

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# 428823 (TAMU 11-363).

Texas A&M University (the "university") received a request for all documents reflecting the terms and conditions of employment of the head coach of the men's basketball team and the head athletic director effective during a specified time period, including any supplemental income or benefits received from third-party sources as a direct result of their positions. You inform us some of the requested information does not exist.¹ You state the university will provide the requestor with some of the requested information. You claim portions of the submitted total compensation statement are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 of the Government Code encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (1) contains highly

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos.605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

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. We note this office has found the public has a legitimate interest in the qualifications and work conduct of employees of governmental bodies. *See* Open Records Decision Nos. 562 at 10 (1990), 542 at 5 (1990); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). However, this office has found personal financial information not related to a financial transaction between an individual and a governmental body is intimate or embarrassing and of no legitimate public interest. *See* Open Records Decision Nos. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, are protected under common-law privacy), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we conclude the personal financial information we have marked is intimate and embarrassing and of no legitimate public interest. Accordingly, the university must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy.² However, none of the remaining information you have marked is highly intimate or embarrassing and of no legitimate public interest, and it may not be withheld on that basis.

You also claim section 552.102(a) of the Government Code, which 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). On review, we conclude none of the remaining information is excepted from disclosure under section 552.102(a) of the Government Code. Accordingly, none of the information may be withheld 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 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,

²As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/bs

Ref: ID# 428823

Enc. Submitted documents

c: Requestor
(w/o enclosures)