



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 30, 2011

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

OR2011-17614

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# 438649 (OGC# 139863).

The University of Texas at Austin (the "university") received a request for all documents and correspondence related to a named individual during his tenure as an employee of the university's athletic department. You state the university will release the majority of the responsive information to the requestor. You also state the university has withheld some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You further state the university will redact social security numbers from the submitted information under section 552.147 of the Government Code and information subject to section 552.137 of the Government Code pursuant to Open Records Decision

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

No. 684 (2009).<sup>2</sup> You claim portions of the submitted information are not subject to the Act. Additionally, you claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you assert the submitted university Electronic Identification Numbers (“EID”) are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined that certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office that when combined with an individual’s password, the EIDs serve as “the required log on protocol to access the computer mainframe, the [u]niversity’s centralized hub that runs all its high-level electronic functions.” You further indicate the EIDs are used solely to access the university’s computer mainframe and have no other significance other than its use as a tool for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we determine the EIDs in the submitted information do not constitute public information under section 552.002 of the Government Code. Accordingly, this information is not subject to the Act and need not be released to the requestor.

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. This section encompasses information that other statutes make confidential, such as the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-165.160. Section 159.002 of the MPA provides, in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

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<sup>2</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov’t Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including 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.

*Id.* § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find the medical record information you have marked is subject to the MPA. Accordingly, the university may only release this marked information in accordance with the MPA.<sup>3</sup>

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.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the remaining information, we find the university must withhold the information you have marked under section 552.102(a) of the Government Code.

You state the university will redact personal information subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code.<sup>4</sup> We note the remaining information contains additional personal information subject to section 552.117. Section 552.117 excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). 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). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. In this instance, you provide documentation showing the individual at issue elected confidentiality for his personal information prior to the university’s receipt of the request for information. Accordingly, the university must withhold the marked information under section 552.117(a)(1) of the Government Code.

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

<sup>4</sup>Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c), Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2.

You also state you will redact the driver's license information subject to section 552.130 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>5</sup> The remaining information contains additional motor vehicle record information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state or another state or country;
- (2) a motor vehicle title or registration issued by an agency of this state or another state or country; or
- (3) a personal identification document issued by an agency of this state or another state or country or a local agency authorized to issue an identification document.

Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 4 (to be codified as an amendment to Gov't Code § 552.130). Upon review, we find the marked information must be withheld under section 552.130 of the Government Code.

In summary, the marked EIDs are not subject to the Act. The university may only release the medical record information you have marked in accordance with the MPA. The university must withhold the information you have marked under section 552.102(a) of the Government Code. The university must withhold the marked information under section 552.117(a)(1) of the Government Code. The university must withhold the marked information under section 552.130 of the Government Code. 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.

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<sup>5</sup>We note on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(c)). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 22 (to be codified at Gov't Code § 552.130(d), (e)). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684.

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,

A handwritten signature in cursive script that reads "Kirsten Brew".

Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/ag

Ref: ID# 438649

Enc. Submitted documents

c: Requestor  
(w/o enclosures)