



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 27, 2012

Ms. Allison V. Eberhart
Assistant General Counsel
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711

OR2012-06106

Dear Ms. Eberhart:

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# 452030.

The Texas Higher Education Coordinating Board (the "board") received a request for information pertaining to payments made to the requestor's student loan account. You state the board has 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.

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 common-law right of 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 type 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. *Id.* at 683. This office has determined other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We also have concluded personal financial information related only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open Records Decision Nos. 545 at 4 (1990) (attorney general has found kinds of financial information not excepted from public disclosure by common-law privacy to generally be those regarding receipt of governmental funds or debts owed to governmental entities), 523 at 4 (1989) (noting distinction under common-law privacy between confidential background financial information furnished to public body about individual and basic facts regarding particular financial transaction between individual and public body), 373 at 4 (1983) (determination of whether public's interest in obtaining personal financial information is sufficient to justify its disclosure must be made on case-by-case basis).

Upon review, we find some of the submitted information is highly intimate or embarrassing and not of legitimate public concern. Thus, the board must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, because common-law privacy protects personal privacy, the requestor has a special right of access to portions of the submitted information concerning himself and his account. *See* Gov't Code § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the board may not withhold any of the remaining information from the requestor under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.136 of the Government Code provides, “[n]otwithstanding any other provision of [the Act], 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). You state the board will redact the bank account numbers you have marked pursuant to section 552.136(c), which allows a governmental body to redact the information described in subsections 552.136(a) and (b) without the necessity of seeking a decision from the attorney general. *See id.* § 552.136(c). However, we note that one of the bank account numbers you have marked, which we have marked for release, belongs to the requestor. Section 552.136 protects personal privacy. As noted above, this requestor has a right of access to his own information that would otherwise be confidential under privacy principles. Therefore, the board may not withhold the requestor's bank account number from him on this basis. *See id.* § 552.023. The board must withhold the remaining bank account number you have marked, as well as the routing number we have marked, under section 552.136 of the Government Code.

In summary, the board must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. With the exception of

the information we have marked for release, the board must withhold the information it has marked, as well as the additional information we have marked, under section 552.136 of the Government Code. The board must release the remaining information.¹

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/em

Ref: ID# 452030

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As noted, the requestor in this instance has a special right of access under section 552.023 to some of the information being released. Accordingly, if the board should receive another request for this information from a different requestor, the board must again request an opinion from this office.