



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2012

Ms. Laura S. Fowler
The Fowler Law Firm, P.C.
919 Congress Avenue, Suite 900
Austin, Texas 78701

OR2012-13779

Dear Ms. Fowler:

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# 467927.

Howard College (the "college"), which you represent, received a request for "all settlement and/or separation agreements between [the college] and any employees, consultants, advisors, [and] contractors who had employment relationships with [the college]." You claim some of the submitted information is excepted from disclosure under sections 552.102 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note section 552.022(a) of the Government Code is applicable to the submitted information, which provides in relevant part the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(18) a settlement agreement to which a governmental body is a party.

Gov't Code § 552.022(a)(18). The submitted information consists of a settlement agreement that is subject to section 552.022(a)(18) of the Government Code. Although you raise section 552.103 of the Government Code for this information, this section is a discretionary exception to disclosure that protects a governmental body's interest and does not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). Consequently, the college may not withhold the settlement agreement under section 552.103 of the Government Code. However, because section 552.102 of the Government Code makes information confidential under the Act, we will consider your argument under this section.

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwanted invasion of personal privacy." Gov't Code § 552.102(a). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court expressly disagreed with Hubert's interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of section 552.102, and 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. See *id.* at 347-48. Upon review, we find no portion of the submitted information is subject to section 552.102(a), and the college may not withhold any of the remaining information on that basis. Furthermore, none of the information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the college may not withhold any of information under section 552.101 of the Government Code in conjunction with common-law privacy. As you raise no other exceptions to disclosure, the submitted 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,

A handwritten signature in cursive script that reads "Paige Lay".

Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 467927

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

