



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2012

Ms. Ruth E. Shapiro
Senior Assistant General Counsel
University of Houston System
311 E Cullen Building
Houston, Texas 77204-2028

OR2012-14941

Dear Ms. Shapiro:

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# 465399.

The University of Houston (the "university") received a request for information related to a named individual and a second request for information related to the same named individual and another named individual.¹ You state you will withhold certain information pursuant to Open Records Letter No. 684 (2009).² You claim that the submitted information is excepted

¹You note that the university sought and received clarification of the information requested in the second request. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including W-4 forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code and access device numbers under section 552.136, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Thus, the statutory amendments to section 552.136 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to section 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

from disclosure under sections 552.101 and 552.102 of the Government Code. Further, you state release of the submitted information may implicate the interests of one of the named individuals. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the first requestor seeks to place a standing request for "copies of future requests and responses matching [the instant request for information] until December 31, 2012." It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See id.* §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by the present request consists of documents the university maintained or had a right of access to as of the date it received this request.

Next, we note the information pertaining to the second named individual was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-11650 (2012). In that ruling, we concluded the university must withhold certain marked information under section 552.101 of the Government Code in conjunction with common-law privacy; must withhold certain marked dates of birth under section 552.102(a) of the Government Code; and, to the extent the second named individual timely requested confidentiality under section 552.024 of the Government Code, the university must withhold certain marked information under section 552.117(a)(1) of the Government Code. As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the university must continue to rely on Open Records Letter No. 2012-11650 as a previous determination and withhold or release the information pertaining to the second named individual in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 doctrine of common-law privacy, which

³We note we have not received comments from the named individual explaining why the submitted information should not be released. Accordingly, the university may not withhold the submitted information on the basis of any interest the named individual may have in the information.

protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the 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. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600* (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and 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). Upon review, we agree a portion of the submitted information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. Therefore, the university must withhold this information pursuant to section 552.101 of the Government Code in conjunction with common-law privacy. However, you have failed to demonstrate any of the remaining information at issue is highly intimate or embarrassing and a matter of no legitimate public interest. Therefore, no portion of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

You also raise section 552.102 of the Government Code and assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101, which is discussed above. *See Indus. Found.*, 540 S.W.2d at 685. 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 court ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court 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. *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 have marked the information the university must withhold under section 552.102(a) of the Government Code. The remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

We note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code.⁴ Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.024, .117. 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. We have marked the information in the submitted documents that may be subject to section 552.117(a)(1) of the Government Code. Therefore, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code. To the extent the individual at issue did not make a timely election under section 552.024, the university may not withhold the information we marked under section 552.117(a)(1) of the Government Code.⁵

In summary, the university must continue to rely on Open Records Letter No. 2012-11650 as a previous determination and withhold or release the information pertaining to the second named individual in accordance with that ruling. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy and the dates of birth we have marked under section 552.102(a) of the Government Code. To the extent the individual whose information is at issue timely requested confidentiality, the university must withhold the information we have marked under section 552.117(a)(1) 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.

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470.

⁵Regardless of the applicability of section 552.117, 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. Gov't Code § 552.147(b).

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 black ink, appearing to read 'VB', followed by a long horizontal line.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/akg

Ref: ID# 465399

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)