



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 10, 2014

Ms. Ana Vieira
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2014-04080

Dear Ms. Vieira:

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# 516134 (OGC# 153563).

The University of Texas Medical Branch at Galveston (the "university") received a request for personnel information of three named individuals, including records related to any investigations involving the individuals. You state the university "is handling the release" of some of the responsive information. Further, you state the university is withholding some of the requested information in accordance with Open Records Letter No. 2013-16994A (2013).¹ You also state the university will redact some information subject to

¹In Open Records Letter No. 2013-16994A, this office concluded the university generally must withhold the information it marked under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code, but it may choose to release information concerning the closed investigations to the district attorney's office, to the extent the district attorney's office has complied with applicable law and procedure; the university must withhold the remaining information, including the ongoing compliance investigation, under section 552.101 of the Government Code in conjunction with section 161.032 of the Health and Safety Code. *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).

sections 552.117 and 552.147 of the Government Code.² You claim the remaining requested information is 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 representative sample of information.³ We have also considered comments submitted by the requestor.⁴ *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses section 51.971 of the Education Code, which provides in part:

(a) In this section:

(1) "Compliance program" means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

²Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, emergency contact information, and family member information of current or former officials or employees of a governmental body. Section 552.024 of the Government Code permits a governmental body to redact information subject to section 552.117 of the Government Code in certain situations without requesting a decision from this office. *See* Gov't Code § 552.024(c). Section 552.147 of the Government Code authorizes a governmental body to redact the social security number of a living person without seeking a ruling from this office. *See id.* § 552.147(b).

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

⁴The requestor contends, among other things, that the submitted information should be presumed public and released because the university failed to comply with section 552.301 of the Government Code in requesting this decision. *See id.* §§ 552.301(a)-(b), (e), .302. Even if the requestor is correct, however, we note the university's claims under sections 552.101 and 552.102 can provide compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). Accordingly, we need not decide whether the university complied with section 552.301 and will determine whether it may withhold the submitted information pursuant to the claimed exceptions.

(D) auditing.

...

(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

(e) Information is excepted from disclosure under [the Act], if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(a), (c)–(e)(1). You state the information you have marked under section 51.971 concerns a complaint made to the university concerning alleged violations of law and institutional policies. You further state the complaint relates to an ongoing investigation into ethical questions and standards of conduct involving university employees. You explain the purpose of this ongoing investigation is to assess and ensure compliance with all applicable laws, rules, regulations, and policies. You assert the release of this information during the pendency of the investigation would interfere with, and potentially compromise, that investigation. Based on these representations and our review, we agree the information pertaining to the ongoing compliance investigation is confidential under section 51.971(e) of the Education Code, and the university must withhold it under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law 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 satisfied. *Id.* at 681-82.

Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. See Open Records Decision No. 455 (1987). This office also has found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision No. 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, protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy).

Upon review, we find some of the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, we have marked the information the university must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.⁵ However, the university has failed to demonstrate the remaining information you have marked is confidential under common-law privacy and the university may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information

⁵As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Upon review, we find the university has failed to demonstrate how any of the remaining information at issue falls within the constitutional zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Therefore, none of the remaining marked information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

You seek to withhold some of the remaining information under 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). The Texas Supreme Court 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.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we agree the university must withhold the dates of birth you have marked under section 552.102(a) of the Government Code.

We note the remaining records contain information subject to section 552.130 of the Government Code.⁶ Section 552.130 provides information relating to a personal identification document issued by an agency of this state or another state or country is excepted from public release. *See* Gov’t Code § 552.130(a)(3). Accordingly, the university must withhold the information we have marked under section 552.130 of the Government Code.⁷

To summarize: Under section 552.101 of the Government Code, the university must withhold (1) the information you marked in conjunction with section 51.971 of the Education Code and (2) the information we marked in conjunction with common-law privacy. The university also must withhold (1) the dates of birth you have marked under section 552.102(a) of the Government Code and (2) the information we have marked 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.

⁶The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁷We note section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* 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 id.* § 552.130(d), (e).

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 516134

Enc. Submitted documents

c: Requestor
(w/o enclosures)