



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 22, 2014

Ms. Jennifer E. Bloom
Senior Assistant General Counsel
Office of the General Counsel
University of Houston System
311 East Cullen Building
Houston, Texas 77204-2028

OR2014-16800

Dear Ms. Bloom:

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# 537016.

The University of Houston (the "university") received a request for an unredacted or properly redacted copy of the university's June 17, 2014 letter to the Office of the Attorney General and any documents sent to or received from an attorney representing a named former employee since the employee resigned. You claim that the redacted version of the university's letter to this office was properly redacted pursuant to section 552.301(e-1) of the Government Code. You also claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, we must address the university's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). You state the university received the present request on June 26, 2014. You inform us the university was closed on July 4, 2014. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the

Act. Thus, the university's ten-business-day deadline was July 11, 2014. However, the envelope in which you requested a ruling from this office bears a meter mark of July 14, 2014, and its certified mail history reflects it was received by the United States Postal Service on July 15, 2014. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Consequently, we find the university failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise section 552.103 of the Government Code for the information at issue, this section is discretionary in nature. It serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information. *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), 663 at 5 (waiver of discretionary exceptions). Thus, the university has waived its claim under section 552.103 for the submitted information.¹ Furthermore, we note even if the university had been timely in its current request for a ruling, section 552.103 does not apply to Exhibits 3 and 5 because they have been obtained from or provided to the potential opposing party. Open Records Decision No. 349 at 2 (1982) (once information has been obtained by all parties to anticipated litigation, no section 552.103(a) interest exists with respect to that information). We note, however, portions of this information are subject to sections 552.101, 552.117, and 552.137 of the Government Code.² Because sections 552.101, 552.117, and 552.137 can provide compelling reasons to withhold information, we will consider the applicability of these exceptions to the submitted information.

¹We note we need not decide whether your proposed redactions in the June 17, 2014 brief, which you have submitted as Exhibit 4, comply with section 552.301(e-1) of the Government Code because we have already determined the question of the university's compliance with section 552.301(e-1) in Open Records Letter No. 2014-14554 (2014) and, moreover, that ruling determined the information described in the June 17, 2014 brief is subject to release. *See Gov't Code* § 552.301(e-1) (governmental body must send copy of written arguments to withhold requested information to requestor, but may redact written comments if they reveal substance of requested information).

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Section 552.101 of the Government Code excepts “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 protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 personal financial information not relating to the financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. *See* Open Records Decision Nos. 600 (designation of beneficiary of employee’s retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). However, information concerning financial transactions between an employee and a public employer is generally of legitimate public interest. ORD 545. Upon review, we find some of the information at issue satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information we have marked in Exhibit 3 under section 552.101 of the Government Code in conjunction with common-law privacy.

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 a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code §§ 552.117(a)(1), .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee or official 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. Therefore, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals whose information is at issue did not timely request confidentiality under section 552.024, the university may not withhold the information we have marked under section 552.117(a)(1).

We note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code. Section 552.137 excepts from disclosure “an e-mail address of a

member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the university must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the university must withhold the information we have marked: (1) in Exhibit 3 under section 552.101 of the Government Code in conjunction with common-law privacy; (2) in Exhibits 3 and 5 under section 552.117(a)(1) of the Government Code, to the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code; and (3) in Exhibit 5 under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The university must release the remaining information.

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.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,

Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bhf

Ref: ID# 537016

Enc. Submitted documents

c: Requestor
(w/o enclosures)