



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2014

Ms. Ana Vieira
Attorney and Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2014-19123

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# 540596 (OGC# 157637).

The University of Texas at Austin (the "university") received a request for depositions taken in connection with two specified cases. You state the university will release some information to the requestor. You state the university will redact information subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code and information subject to section 552.136 of the Government Code.¹ Further, you state, pursuant to the previous determination in Open Records Decision No. 684 (2009), the university will redact personal e-mail addresses subject to section 552.137 of the

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2). Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See id.* § 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).

Government Code.² You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.107, and 552.1235 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.³ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” 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 found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information you marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.107(2) provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov't Code § 552.107(2). You state the information you marked is subject to a stipulation and protective order entered by the Superior Court of the State of California for the County of Los Angeles. The court order states it is ordered that “[a]ny party or non-party. . . may designate as ‘Confidential Information’ any document or information obtained through or in connection with discovery in [the litigation at issue], including, but not limited to, deposition testimony or exhibits[.]” *Found. for Global Sports Dev. v. Univ. of Texas at Austin* (Super. Ct. Los Angeles County, filed April 5, 2014, No. BC 509353). You have also submitted documentation noting one

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

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 that those records contain substantially different types of information than that submitted to this office.

of the parties designates the submitted deposition and its exhibits as confidential pursuant to the stipulation and protective order. Upon review of the remaining information, we agree a court by order has prohibited disclosure of the information at issue. You do not state there has been an order of the court authorizing release of the information at issue. Accordingly, the university must withhold the information you marked under section 552.107(2) of the Government Code.

Section 552.1235 of the Government Code excepts from disclosure “[t]he name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]” Gov’t Code § 552.1235(a). For purposes of this exception, “institution of higher education” is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an “institution of higher education” as meaning “any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section.” Educ. Code § 61.003(8). Because section 552.1235 does not provide a definition of “person,” we look to the definition provided in the Code Construction Act. *See* Gov’t Code § 311.005. “Person” includes a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. *Id.* § 311.005(2). You state some of the remaining information identifies donors. To the extent the information at issue identifies a donor that has made a gift that has not been publicized, the university must withhold the donor’s identifying information under section 552.1235 of the Government Code in relation to that gift. However, to the extent the information at issue identifies a donor who has already been publicly identified for that particular gift, the university may not withhold the donor’s identifying information under section 552.1235 and the donor’s identifying information in relation to that gift must be released.

In summary, the university must withhold the information it marked under section 552.101 of the Government Code in conjunction with common-law privacy and the information it marked under section 552.107(2) of the Government Code. To the extent the remaining information identifies a donor that has made a gift that has not been publicized, the university must withhold the donor’s identifying information under section 552.1235 of the Government Code in relation to that gift. 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,

A handwritten signature in black ink that reads "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/dls

Ref: ID# 540596

Enc. Submitted documents

c: Requestor
(w/o enclosures)