



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 26, 2016

Ms. Claudene Marshall
Assistant General Counsel
Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2016-19403

Dear Ms. Marshall:

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# 624226 (Ref. No. W000994-060816).

Texas A&M University (the "university") received a request for the personnel file of a named former university employee. We understand you will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, information subject to section 552.117 of the Government Code pursuant to section 552.024 of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim portions of the submitted

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>. Section 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). 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. *See id.* § 552.147(b).

information are excepted from disclosure under sections 552.101, 552.102, 552.1235, 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

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 of the Government Code encompasses federal law. The submitted information contains W-4 tax forms. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Employee W-4 tax forms are excepted from disclosure by section 6103(a). Open Records Decision No. 600 (1992). Accordingly, the university must withhold the submitted W-4 tax forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.³

Section 552.101 of the Government Code also 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (1992) (employee's withholding allowance certificate, designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, 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), 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). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9

²Although you do not raise sections 552.102 and 552.137 of the Government Code in your brief, we understand the department to assert these exceptions based on your markings.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

(information revealing employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373. Upon review, we find the remaining information contains information that satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the university must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code 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 find the university must withhold the date of birth you have marked under section 552.102(a) 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 the information you have marked under section 552.1235 identifies a donor. Based on this representation, we agree the university must withhold the information you marked under section 552.1235 of the Government Code.

Section 552.137 of the Government Code 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 id.* § 552.137(a)-(c). You seek to withhold the private e-mail address of a university employee who used her private e-mail address to conduct official government business. However, in *Austin Bulldog v. Leffingwell*, No. 03-13-00604-CV, 2016 WL 1407818 (Tex. App.—Austin April 8, 2016,

no pet.), the court concluded section 552.137 does not except from disclosure the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *See Austin Bulldog*, 2016 WL 1407818, at *7. Therefore, upon review, we find you have failed to demonstrate this e-mail address, which we have marked for release, is excepted under section 552.137 and the university may not withhold it on that basis. With the exception of the information we have marked for release, we find the university must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the university must withhold the submitted W-4 tax forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the date of birth you have marked under section 552.102(a) of the Government Code. The university must withhold the information you marked under section 552.1235 of the Government Code. With the exception of the information we have marked for release, we find the university must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 624226

Enc. Submitted documents

c: Requestor
(w/o enclosures)