



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 31, 1994

Ms. R. Yvette Clark
General Counsel
Stephen F. Austin State University
P.O. Box 13065, SFA Station
Nacogdoches, Texas 75962-3065

OR94-010

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22993.

Stephen F. Austin State University (the "university") has received a request for "copies of all 'Disbarment From Campus' notices handed out by [the university], or its representatives, within one year preceeding [sic] the date of this letter [October 8, 1993]." You contend the requested information is excepted from required public disclosure under sections 552.101, 552.102, and 552.108 of the Government Code.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." In order for information to be protected from public disclosure under the common-law right of privacy as incorporated by section 552.101, the information must meet the criteria set out in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that:

information . . . is excepted from mandatory disclosure under
Section 3(a)(1) as information deemed confidential by law if (1) the

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

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.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former section 3(a)(1) of article 6252-17a, V.T.C.S.). The type of information considered highly intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation of the South* 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. 540 S.W.2d at 683.

The disbarment letters at issue are clearly distinguishable from the information found to be highly intimate and embarrassing by the Texas Supreme Court. The letters are standardized, containing the individual's name and relationship, if any, to the university, and stating the fact that he or she has been disbarred from the university's campus. The notices threaten charges of criminal trespass should the individual in question enter the campus.² Although you list potentially embarrassing reasons for the disbarment letters in your brief to this office, the reasons for the disbarments are not contained in the letters at issue. The public has a legitimate interest in knowing who has been restricted from entering the campus of a public university. *See generally* Open Records Decision Nos. 438 (1986) (the public clearly has a legitimate interest in knowing the details of an apparently well-founded accusation of sexual harassment against a city supervisor, and in knowing why a decision not to prosecute was made); 422 (1984) (information which reveals that a person was the victim of a self-inflicted gunshot wound does not, in itself, satisfy the standard of common-law privacy); 408 (1984) (there is a legitimate public interest in knowing the names of persons arrested and indicted for felony offenses, even when the indictment is later dismissed). Accordingly, you may not withhold any of the requested information under section 552.101 of the Government Code.

Section 552.102 excepts:

(a) . . . information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, except that all information in the personnel file of an employee of a governmental body is to be made available to that employee or the employee's designated representative as public information is made available under this chapter.

²Obviously the university considers disbarment a police rather than an administrative matter. You do not claim that any of the disbarred individuals are juveniles. *Cf.* Open Records Decision No. 181 (1977) (police reports which identify juveniles or furnish a basis for their identification are excepted by section 51.14 of the Family Code).

(b) . . . a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

Section 552.102 protects personnel file information only if its release would cause an invasion of privacy under the test articulated for common-law privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.) (court ruled that test to be applied in decision under former section 3(a)(2), V.T.C.S. art. 6252-17a, was the same as that delineated in *Industrial Foundation of the South* for former section 3(a)(1), V.T.C.S. art. 6252-17a).

Only one letter is addressed to an employee of the university. There is a legitimate public interest in knowing that an employee of the university has been suspended and disbarred from campus. Open Records Decision Nos. 444 (1986) (the public has a legitimate interest in knowing the reasons for the dismissal, demotion, promotion, or resignation of a public employee); 400, 405 (1983) (the manner in which an employee performs his job cannot be said to be of minimal interest to the public). Accordingly, you may not withhold the requested information under section 552.102 of the Government Code.³ However, if the employee of the university elected to have his home phone number and address withheld from public disclosure prior to the date of the request, the employee's address must be deleted before releasing the information. Gov't Code §§ 552.024, 552.117(1)(A).⁴

³You claim that because the university is not required to hold "pre-disbarment due process proceedings," the "privacy and property (liberty) interests [of those receiving notices] could be jeopardized by publicly releasing the requested disbarment notices." We consider your argument an attempt to raise the tort doctrine of false-light privacy. "Information actionable under the tort doctrine of false-light privacy is not within section [552.101] protection of information deemed confidential by law." Open Records Decision No. 579 (1990) (quoting from the summary).

⁴Section 552.024 provides that:

(a) Each employee or official of a governmental body and each former employee or official of a governmental body shall choose whether to allow public access to the information in the custody of the governmental body relating to the person's home address and home telephone number.

Section 552.117 excepts:

(1) the home address or home telephone number of:

(A) a current or former official or employee of a governmental body, except as otherwise provided by Section 552.024.

Section 552.108 excepts

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution

Where an incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). Certain factual information generally found on the front page of police offense reports, however, is public even during an active investigation. *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976) at 3-4 (list of factual information available to the public) (copy enclosed).

After a file has been closed, either by prosecution or by administrative decision, the availability of section 552.108 is greatly restricted. Open Records Decision No. 320 (1982). The test for determining whether information regarding closed investigations is excepted from public disclosure under section 552.108 is whether release of the records would unduly interfere with the prevention of crime and the enforcement of the law. Open Records Decision No. 553 (1990) at 4 (and cases cited therein). A governmental body claiming the "law enforcement" exception must reasonably explain how and why release of the requested information would unduly interfere with law enforcement and crime prevention. Open Records Decision No. 434 (1986) at 2-3.

The disbarment notices contain the barest of factual information. You do not claim that the notices constitute active cases, and you do not indicate how their release would unduly interfere with law enforcement and crime prevention. You may not, therefore, withhold the requested information under section 552.108 of the Government Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LBC/rho

Ref.: ID# 22993

Enclosures: Returned documents

cc: Ms. Jan L. Fry
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(w/o enclosures)