



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1994

Ms. Priscilla A. Lozano
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR94-169

Dear Ms. Lozano:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 24541.

The University of Texas at Brownsville (the "university") received an open records request for the personnel files of one current and three former employees. You argue that certain information contained in attachments to a former employee's letter of resignation should be withheld from the public on privacy and law enforcement grounds.

The common-law right to privacy is safeguarded by section 552.101 of the Government Code, which protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85; *see also* Open Records Decision No. 343 (1982).

This office agrees that the information you have marked on pages 2 and 3 of the attachment to "Exhibit 2" constitutes highly intimate or embarrassing information. However, we also believe that this information is of legitimate interest to the public because the information directly relates to alleged criminal conduct that resulted in the resignation of a public university employee. *See* Open Records Decision No. 444 (1986); *cf. Ross v. Midwest Comm.*, 870 F.2d 271 (5th Cir. 1989) (no cause of action for invasion of privacy for release of highly intimate and embarrassing information where information is of legitimate public interest). The university therefore may not withhold this information pursuant to section 552.101 of the Government Code.

You also contend that the second attachment comes under the protection of section 552.108, the "law enforcement exception," in its entirety because it consists of a criminal complaint the former employee filed in connection with her resignation. When a governmental body claims section 552.108, this office must determine on a case-by-case basis whether the release of requested information would undermine a legitimate interest in law enforcement or prosecution. Open Records Decision No. 434 (1986).

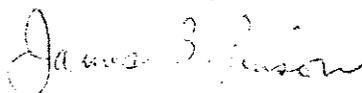
Generally, documentary evidence in a police file in a pending case is protected by section 552.108, even where the information is held by a non-law enforcement agency. *See Attorney General Opinion MW-575 (1982)*. However, where the prospects of prosecution are speculative and nebulous, or where no criminal prosecution results, the information normally cannot be withheld under section 552.108. Open Records Decision Nos. 582 (1990); 350 (1982).

In this instance you have not made the requisite showing that any law enforcement interest would be compromised by the release of the criminal complaint. However, the public prosecutor in any particular case is ordinarily the best judge of whether release of certain records would unduly interfere with law enforcement. Open Records Decision No. 434. This office notified the Cameron County District Attorney's Office about the pending open records request and inquired as to whether any law enforcement interest existed for withholding the complaint. Assistant County Attorney Dylbia Jefferies has informed us that there is no objection to the release of these materials. Consequently, the university must release the requested records in their entirety.

Finally, we note that you state that the university is releasing the remaining requested information "except information previous Attorney General Opinions have held is excluded from release," citing Open Records Decision No. 600 (1992) as authority. If the information to which you refer includes personnel evaluations, you should be aware that Open Records Decision No. 615 overruled Open Records Decision No. 600 to the extent that the prior ruling held that all personnel evaluations come under the protection of former section 3(a)(11) of the Open Records Act (now found at section 552.111 of the Government Code). *See Open Records Decision No. 615 (1993) (copy enclosed)*.

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 our office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Open Government Section

JBP/RWP/rho

Ref.: ID# 24541
ID# 25241

Enclosures: Open Records Decision No. 615
Submitted documents

cc: Ms. Chris Plata
Collegian Staff Reporter
The University of Texas at Brownsville
80 Fort Brown
Brownsville, Texas 78520
(w/o enclosures)