



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 23, 1996

Mr. William L. Fly
University Attorney
Southwest Texas State University
601 University Drive
San Marcos, Texas 78666-4615

OR96-0234

Dear Mr. Fly:

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# 38199.

Southwest Texas State University (the "university") received two open records requests for information concerning an audit conducted by the university relating to a university employee. Both requesters seek the completed audit, and one of the requests seeks additional, related information including working papers, preliminary reports, and related settlement agreements. Although you have made the summary of the audit available to the requesters, you urge that the remainder of the requested information is excepted from disclosure under sections 552.102 and 552.111 of the Government Code, and have provided copies of these documents for our review.

Section 552.111 excepts from disclosure "only those internal agency communications consisting of advice, recommendations, opinions and other material reflecting the deliberative or policymaking processes of the governmental body at issue." Open Records Decision No. 615 (1993) at 5. This exception is intended to protect advice and opinions given on policy matters and to encourage frank and open discussions within an agency in connection with the agency's decision-making processes. *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 412 (Tex. App.--Austin 1992, no writ) (citing *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.)). The policymaking functions of an agency, however, do not encompass routine internal administrative and personnel matters. Open Records Decision No. 615 (1993) at 5. Furthermore, section 552.111 does not except purely factual information from disclosure. *Id.*

The information you submitted relates to a specific personnel matter, rather than the broad, policy mission of the university. *Cf.* Open Records Decision No. 631 (1995), (university may withhold under 552.111 portions of report concerning discrimination in faculty employment; report was broad and involved university's educational mission). Additionally, most of the information you submitted is factual and does not consist of advice, opinion or recommendation. Therefore, you may not withhold these documents under section 552.111.

You also suggest that these documents may be withheld under section 552.102 of the Government Code. Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" Section 552.102 is designed to protect public employees' personal privacy. The scope of section 552.102 protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102 protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.-Austin 1983, writ ref'd n.r.e.).

The documents you submitted relate to a university employee's job performance and the expenditure of public funds. The subject matter of the information is therefore not of a highly intimate or embarrassing nature. Moreover, there exists a legitimate public interest in a public employee's job performance and the expenditure of public funds. *See, e.g.*, Open Records Decision No. 444 (1986) at 4 (legitimate public interest in information relating to public employees). Thus, none of the information you have submitted is excepted under sections 552.101 or 552.102 and must be released.

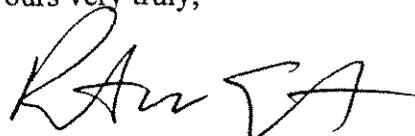
Finally, we note that the settlement agreement you submitted contains a nondisclosure provision which provides that neither party will disclose any information about the settlement "except to the extent required by law." Normally, a settlement agreement that is not made confidential by a court order will be open to the public. Open Records Decision No. 114 (1975); *see also* Open Records Decision No. 444 (1986) at 6 ("governmental bodies may not simply agree to keep information confidential"); *cf. Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 358 U.S. 931 (1977) ("we do not believe that information should be excepted from disclosure merely because the individual furnishing such information did so with the expectation that access to the information would be restricted."). Absent a specific court order making the agreement confidential, the settlement agreement may not be withheld from public disclosure.

order making the agreement confidential, the settlement agreement may not be withheld from public disclosure.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records.

If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/ch

Ref.: ID# 38199

Enclosures: Marked documents

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