



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 24, 1998

Mr. Thomas G. Ricks  
President and Chief Executive Officer  
University of Texas Investment  
Management Company  
210 W. Sixth Street, Second Floor  
Austin, Texas 78701

OR98-1755

Dear Mr. Ricks:

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# 116872.

The University of Texas Investment Management Company ("UTIMCO") received a request for, among other things, the "[p]ersonnel files of all UTIMCO employees and officers with responsibilities that include Alternative Illiquid Investments." You state that you have released some of the requested information to the requestor. You seek to withhold, however, seven categories of information and have submitted the records at issue to this office.<sup>1</sup>

You seek to withhold some of the information at issue pursuant to section 552.117 of the Government Code. Section 552.117(1) makes confidential a public employee's home address, home telephone number, social security number, and any information revealing whether the employee has family members, but only if the employee has elected to keep this information confidential in accordance with section 552.024 of the Government Code. Assuming the UTIMCO employees have previously elected to make these categories of information confidential in accordance with section 552.024 of the Government Code, we agree that UTIMCO must withhold these types of information from the documents at issue. *But see* Open Records Decision No. 530 (1989) (character of requested information as public under statutory predecessors to sections 552.024 and 552.117 is determined as of time request for information is made).

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<sup>1</sup>In the future, we suggest that you submit copies rather than the original documents.

You also contend that some of the information at issue must be withheld from the public pursuant to section 552.102 of the Government Code in conjunction with common-law privacy. Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) 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(a) 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.). Section 552.102(a) may be invoked only when information reveals "intimate details of a highly personal nature." Open Records Decision No. 315 (1982).

None of the information contained in the "Disciplinary Action Disclosure Statements" or the "UTIMCO Performance Appraisal" submitted to this office comports with this standard. Accordingly, no portion of these documents may be withheld pursuant to section 552.102(a). *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees).

You also seek to withhold pursuant to common-law privacy the financial disclosure statements of each "Private Equity Manager." These statements provide information regarding the managers' personal investments. This office has previously determined that these types of financial disclosure statements are excepted from required public disclosure pursuant to common-law privacy. *See* Open Records Letter No. 97-1776 (1997); *see also* Open Records Decision No. 373 (1983) at 3 (background financial information is type of intimate information generally protected under common-law privacy). UTIMCO therefore must withhold these records pursuant to section 552.102(a).<sup>2</sup> For similar reasons, we conclude that UTIMCO must also withhold all documents it has received from lenders in connection with its employees' personal loan applications and any information reflecting UTIMCO employees' choice of bank and banking account number. *See* Open Records Decision No. 600 (1992).

Section 552.101 of the Government Code also protects information made confidential by statute. The tax forms submitted to this office constitute confidential "tax return information" and as such must be withheld pursuant to federal law. *See* 26 U.S.C. § 6103.

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<sup>2</sup>We note that the requestor has not made any demonstration in this instance that these individuals' personal financial information is a matter of legitimate public concern. *See* Open Records Decision No. 373 (1983) at 3 (in particular cases, requestor may demonstrate public interest in access sufficient to justify disclosure).

We also agree with your contention that the "Employment Eligibility Verification, Form I-9," is made confidential by federal law and therefore must be withheld from the public. *See* 8 U.S.C. § 1324a(b)(5).<sup>3</sup>

Section 552.130(1) excepts from public disclosure information relating to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." The photocopy of the Private Equity Manager's driver's license you submitted to this office must be withheld in its entirety pursuant to section 552.130 of the Government Code.

Finally, we address the applicability of section 552.111 to the "Disciplinary Action Disclosure Statements" and the "UTIMCO Performance Appraisal." Section 552.111 of the Government Code excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). In Open Records Decision No. 615 (1993), this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . . [Emphasis in original.]

Open Records Decision No. 615 (1993) at 5. Additionally, section 552.111 does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 615 (1993) at 5. If, however, the factual information is so inextricably intertwined with material involving advice, opinion, or recommendation as to make separation of the factual data impractical, that information may be withheld. Open Records Decision No. 313 (1982).

We have reviewed the documents at issue and conclude that only small portions of the "UTIMCO Performance Appraisal" submitted to this office consist of advice, opinion, and recommendation protected by section 552.111. However, most of this document, as well as the "Disciplinary Action Disclosure Statements," consists of factual information that may not be withheld by section 552.111. We have marked the portions of the "UTIMCO Performance Appraisal" that may be withheld. The remaining portions of this document must be released, as must the Disciplinary Action Disclosure Statements in their entirety.

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<sup>3</sup>This office could identify no federal statute, however, that makes confidential an individual's passport or the respective passport number. Absent authority indicating otherwise, we conclude the passport information must be released.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/RWP/ch

Ref.: ID# 116872

Enclosures: Submitted documents

cc: Mr. Stephen Lisson  
Initiate!!  
P.O. Box 2013  
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(w/o enclosures)