



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 17, 1998

Dr. Arthur K. Smith
University of Houston System
E. Cullen Building
Room 212
Houston, Texas 77204-2162

OR98-1945

Dear Dr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 118102.

The University of Houston (the "university") received a request for information concerning the employment of Dennis P. Duffy. You assert that the requested information is excepted from public disclosure by sections 552.026, 552.102, 552.114, and 552.117 of the Government Code.¹

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office copies or representative samples of the specific information that was requested.

Pursuant to section 552.303(c) of the Government Code, this office notified you by letter facsimile dated July 9, 1998, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public.

¹Sections 552.026 and 552.114 do not apply to any of the submitted documents because they are employee records, not student records.

You provided our office with a representative sample of the requested information on July 24, 1998, more than seven days from the date of your receipt of our notification.² Consequently, we find that you have not complied with sections 552.301 through 552.303 of the act and that the information is presumed to be public. Open Records Decision No. 195 (1978). Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). The presumption of openness is overcome by a showing that the information is made confidential by another source of law or affects third party interests. Open Records Decision No. 150 (1977). Because the submitted information is made confidential by law and affects third party interests, we will address your arguments against public disclosure.

Section 552.102 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). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Government Code.³ *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). Common-law privacy excepts from disclosure private facts about an individual. *Id.* Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. This office has determined that some personal financial information is highly intimate or embarrassing and thus it meets the first part of the *Industrial Foundation* test. See Open Records Decision Nos. 600 (1992) (federal tax Form W-4; Employee's Withholding Allowance Certificate; designation of beneficiary of employee's retirement benefits; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). We have marked the

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

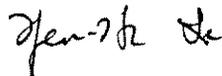
³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

information excepted by common-law privacy as encompassed by sections 552.101 and 552.102.

Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or personal family members information of public employees who request that this information be kept confidential under section 552.024. You inform us that Mr. Duffy has elected to withhold only his social security number. Accordingly, you must withhold Mr. Duffy's social security number under section 552.117.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref: ID# 118102

Enclosures: Marked documents

cc: Ms.Susan S. Septimus
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(w/o enclosures)