



April 6, 1999

Mr. J. Robert Giddings
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR99-0924

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123158.

The University of Texas (the "university") received a request for "five years of crime reports on our campus including all incident reports and records of adjudications of cases that went to disciplinary hearings." The requestor also asks how the university defines the "borders of [its] campus and other properties that fall under reporting requirements for the 1998 federal campus crime law." You inform us that you will release information responsive to the latter request. Furthermore, you explain that you will release incident reports that resulted in a conviction or deferred adjudication, as well as the basic information from all incident reports. You assert that the remaining requested information is excepted from disclosure pursuant to sections 552.108 and 552.114 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.¹

First, we address your arguments against disclosure under section 552.114 of the Government Code. The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone

¹In 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.

but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. The incident and arrest reports of state university campus police departments, however, are not education records for the purposes of FERPA, and such records are not excepted from required public disclosure by sections 552.026 and 552.114. Open Records Decision No. 612 (1992). We conclude that the document which you assert is a student record pursuant to section 552.114 must be released because it is a record of the university police department. The record is not an education record for purposes of FERPA; therefore, it is not excepted from public disclosure by either section 552.026 or 552.114 and must be released.

Second, we consider your section 552.108 arguments. Section 552.108 of the Government Code excepts from required public disclosure:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if:

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

. . . .

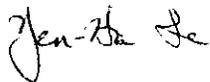
(c) This section does not except from [public disclosure] information that is basic information about an arrested person, an arrest, or a crime.

You indicate that certain reported incidents did not result in a conviction. We conclude that you may withhold such incident reports under section 552.108(a)(2). However, we note that "basic information about an arrested person, an arrest, or a crime" is not excepted from required public disclosure. Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information even if this information is not actually located on the front page of the offense report. *See generally Houston Chronicle Publ'g 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). Accordingly, you must release basic information from all incident reports.

Lastly, you have marked a set of incident reports that you will release to the requestor. We note that these documents contain information excepted from public disclosure by sections 552.101 and 552.130 of the Government Code. The social security numbers in the reports may be confidential if they were obtained or are maintained by the university police department pursuant to any provision of law, enacted on or after October 1, 1990. 42 U.S.C. § 405(c)(2)(C)(vii); *see* Open Records Decision No. 622 (1994). Section 552.130 excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. We have marked the social security numbers and section 552.130 information that you must withhold.

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.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 123158

Enclosures: Marked documents

cc: Ms. Angela Shah
Higher Education Reporter
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767
(w/o enclosures)



April 6, 1999

Ms. Lorna R. Jones
Assistant County Attorney
Harris County
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR99-0925

Dear Ms. Jones:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 123257.

The Harris County Hospital District (the “district”) received a request for the names and addresses of all retirees. The requestor also seeks the name and address of any surviving spouse who is receiving a pension benefit. You claim that the addresses of the retirees and the names and addresses of their surviving spouses are excepted from disclosure under sections 552.101 and 552.117 of the Government Code.

It does not appear that the district has sought an open records decision from this office within the statutory ten-day deadline. *See* Gov’t Code § 552.301. The district’s delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. A demonstration that the requested information is deemed confidential by law is sufficient to negate this presumption. *See* Open Records Decision No. 150 (1977).

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Section 552.101 also encompasses the doctrine of common-law privacy. The doctrine of 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 the public has no legitimate interest in it. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). This office has previously concluded that the names and home addresses of private citizens are not “intimate” information and, therefore, not protected under common-law privacy. *See* Open Records Decision Nos. 478 (1987), 455 (1987), 254 (1980).

Section 552.101 also excepts from disclosure information protected by constitutional privacy. The constitutional right to privacy consists of two related interests: 1) the individual interest in independence in making certain kinds of important decisions, and 2) the individual interest in independence in avoiding disclosure of personal matters. The first interest applies to the traditional "zones of privacy" described by the United States Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), and *Paul v. Davis*, 424 U.S. 693 (1976) and are clearly inapplicable here.

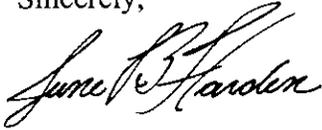
The second interest in nondisclosure or confidentiality may be somewhat broader than the first. Unlike the test for common-law privacy, the test for constitutional privacy involves a *balancing* of the individual's privacy interests against the public's need to know information of public concern. Although such a test might appear more protective of privacy interests than the common-law test, the scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the "most intimate aspects of human affairs." See Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985)). As noted above, the information you seek to withhold does not concern the intimate aspects of an individual's private affairs. Therefore, the requested information is not protected by constitutional privacy.

Finally, you argue that the requested information is excepted from public disclosure under section 552.117. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of current or former government employees, officials and peace officers, as well as information revealing whether those employees, officials, or officers have family members. Section 552.117 requires you to withhold the home address of a retiree if the retiree requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the retiree made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989) (concluding that governmental body may solicit its employees' § 552.117 preferences for *future* requests only). Furthermore, the district may not withhold the home address of a retiree who retired prior to the effective date of section 552.024. See Open Records Decision No. 488 (1988).

You seek to withhold the names and addresses of surviving spouses under section 552.117 as well. We have reviewed the submitted public information form and it does not appear that the *district* allows its employees to withhold family member information from disclosure. Consequently, the names and addresses of surviving spouses must be released to the requestor. *But see* Open Records Letter No. 97-0271 (1997) (concluding that except for provision relating to family member information, all section 552.117(1) protections lapse upon the death of employee).

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.

Sincerely,

A handwritten signature in cursive script, appearing to read "June B. Harden".

June B. Harden
Assistant Attorney General
Open Records Division

JBH\ch

Ref: ID# 123257

Enclosures: Submitted documents

cc: Mr. Dwight Carmouche
AFSCME Retiree Program
P.O. Box 230242
Houston, Texas 77223-0242
(w/o enclosures)