



June 26, 2001

Ms. Merri Schneider-Vogel  
Bracewell & Patterson  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR2001-2740

Dear Ms. Schneider-Vogel:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148779.

The Brazosport College (the “college”), which you represent, received a request for information relating to applications for employment for a particular position. You state that most of the responsive information has been released. You claim, however, that a portion of the submitted document is excepted from disclosure under sections 552.101 and 552.102(b) of the Government Code. We have considered the exceptions you claim and reviewed the information at issue.

Initially, you claim that the highlighted information is protected from disclosure under section 552.102(b). Section 552.102(b) provides:

Information is excepted from the requirements of Section 552.021 if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except that this section does not exempt from disclosure the degree obtained or the curriculum on a transcript in the personnel file of the employee.

This office has interpreted “professional public school employee,” to refer to employees of public schools providing “public education” under Title 2 of the Education Code, not colleges and universities providing “higher education” under Title 3 of the Education Code. Furthermore, the submitted document is an application for employment for a faculty position;

it is not an actual transcript. Although the highlighted information in the application reveals information about the applicant's transcript, we believe that section 552.102(b) only protects information found on the actual transcript. Finally, the provisions of section 552.102 only apply to employees of the governmental body, not applicants for employment. Open Records Decision No. 345 at 2 (1982). You do not indicate that the applicant is a current or former employee of the college. Therefore, based on the foregoing, we conclude that the highlighted information is not protected from disclosure by section 552.102(b).

You also argue that the highlighted information is protected by section 552.101 in conjunction with the common law right to privacy. Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld under common law privacy 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 at 1 (1992). After reviewing the highlighted information, we do not believe that it is protected by a common law privacy. *See, e.g.*, Open Records Decision Nos. 444 (1986) (employee information about qualifications, disciplinary action and background not protected by privacy).

We note, however, that some of the submitted information may be protected by section 552.117(1). Section 552.117(1) exempts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members when the public employee requests that this information be kept confidential under section 552.024. Section 552.117(1) only applies to current or former employees or officials of the governmental body. Therefore, if the college hired the applicant and the applicant elected to withhold his personal information under section 552.024 before the college received the written request, the college must withhold the section 552.117 information listed in the application. *See* Open Records Decision Nos. 622 (1994), 455 (1987).

We also note that if section 552.117 is not applicable, the submitted social security number may still be protected from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). We note that a social security number may only be withheld under this federal provision if the number *was obtained or is maintained by the governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 (1994). You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the college to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I). We caution the college, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

Prior to releasing the social security number at issue, the college should ensure that this number was not obtained or are maintained by the college pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the highlighted information is not protected from disclosure under section 552.101 or 552.102(b) and must, therefore, be released. We note that some of the information may be protected from disclosure by section 552.117.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

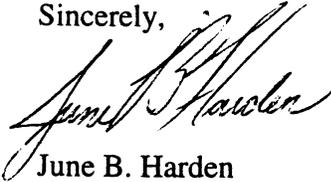
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/SPA/seg

Ref: ID# 148779

Enc. Submitted documents

c: Mr. Robert Beck  
1801 Bering Drive # 737  
Houston, Texas 77057  
(w/o enclosures)