



September 12, 2002

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
301 Tarrow, 6th Floor
College Station, Texas 77840-7896

OR2002-5122

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168520.

The Texas A&M University System Health Science Center's Baylor College of Dentistry (the "TAMBCD") received a request for information relating to open records request matters generated at or received by TAMBCD for the last five years. You claim that portions of the requested information may be excepted from disclosure pursuant to sections 552.101, 552.117, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we must address the procedural requirements of section 552.301 of the Government Code. Section 552.301 provides in pertinent part that a governmental body that requests an attorney general decision must, within a reasonable time but not later than the fifteenth business day after the date of receiving the written request for information, submit to the attorney general a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested. *See* Gov't Code § 552.301(e)(1)(D). Although you state that TAMBCD is in the process of

¹ We note that although TAMBCD does not specifically raise section 552.101 of the Government Code as an exception to disclosure that is applicable to the requested information, the department raises an argument that we believe is sufficient to invoke section 552.101. Accordingly, we will address whether any portion of the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code.

re-assembling responsive records for the present requestor that were provided in response to previously-received requests for information, you claim that portions of those records may now be excepted from disclosure under sections 552.101 and 552.137. In claiming this exception to disclosure for portions of those responsive records, we note that TAMBCD was required by section 552.301(e)(1)(D) to provide us with copies of such records for our review within fifteen business days of receiving the present request. However, TAMBCD did not provide us with any records that were responsive to the requests for information noted as Exhibits B-1 through B-7. Therefore, TAMBCD failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from our office concerning the present request.

When a governmental body fails to submit a copy of the specific information requested or representative samples of the requested information within the fifteen business day time period, the requested information at issue is presumed public. *See Gov't Code § 552.302; see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). A governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is some other source of law that makes the information confidential or a demonstration that third party interests are at stake. *See Open Records Decision No. 150 at 2 (1977)*. Although TAMBCD claims that portions of this particular responsive information are excepted from disclosure pursuant to sections 552.101 and 552.137 of the Government Code, we have no basis for concluding that these exceptions to disclosure are applicable to this particular responsive information, since TAMBCD did not submit this information to us for our review. Accordingly, we have no choice but to order all information that was responsive to the requests for information noted as Exhibits B-1 through B-7 released in its entirety to the requestor pursuant to section 552.302 of the Government Code. *See Gov't Code § 552.302*. If TAMBCD believes that any such information is confidential and may not lawfully be released, it must challenge this decision in court as outlined below.

You claim that portions of Exhibits B-8, B-9, and C may be excepted from disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code § 552.117(1)*. However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. You state that Exhibits B-8 and B-9 "were submitted by a former employee who, during the period of her employment, completed an employee data personal information

sheet indicating that she wished her home address, home telephone number, social security number and family status confidential.” Accordingly, we conclude that TAMBCD must withhold from disclosure the information that we have marked in Exhibits B-8, B-9, and C pursuant to section 552.117(1) of the Government Code.

You also claim that portions of Exhibits B-7, B-8, B-9, and C may be excepted from disclosure pursuant to section 552.137 of the Government Code. Section 552.137 makes certain e-mail addresses confidential and provides in pertinent part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov’t Code § 552.137. Accordingly, we conclude that TAMBCD must withhold from disclosure the e-mail addresses that we have marked in Exhibits B-7, B-8, B-9, and C pursuant to section 552.137 of the Government Code, unless the members of the public in question have affirmatively consented to their release.

You indicate that portions of the remaining submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the constitutional and common-law rights to privacy.² We note that common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See id.* at 683.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. *See Open Records Decision No. 455 at 4* (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See Gov’t Code § 552.101*. Section 552.101 encompasses information protected from disclosure under the constitutional and common-law rights to privacy.

related to marriage, procreation, contraception, family relationships, and child rearing and education. *See id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *See id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

Based on our review of the remaining submitted information, we find that no portion of this information is confidential under either the constitutional or common-law rights to privacy. Accordingly, we conclude that none of this information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the constitutional or common-law rights to privacy.

In summary, TAMBCD must release to the requestor in its entirety all information that was responsive to the requests for information noted in Exhibits B-1 through B-7. TAMBCD must withhold from disclosure the information that we have marked in Exhibits B-8, B-9, and C pursuant to section 552.117(1) of the Government Code. TAMBCD must withhold from disclosure the e-mail addresses that we have marked in Exhibits B-7, B-8, B-9, and C pursuant to section 552.137 of the Government Code, unless the members of the public in question have affirmatively consented to their release. TAMBCD must release the remaining submitted information to the requestor.

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

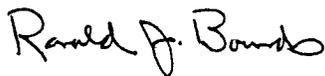
provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 168520

Enc. Marked documents

cc: Mr. J. J. Umoren
Box 270114
Dallas, Texas 75227
(w/o enclosures)