



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 29, 2003

Mr. Renaldo L. Stowers  
Associate General Counsel  
University of North Texas  
P.O. Box 310907  
Denton, Texas 76203-0907

OR2003-5175

Dear Mr. Stowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184526.

The University of North Texas (the "university") received a request for (1) "the complete file on the relationship between the Universal Cheerleaders Association and the [university]"; (2) the funding budget for the music department for this year and the past five years; (3) the allocations of the student services fee for this year and the past five years; and (4) the budget for the spirit squads for this year and the past five years. You inform us that the university will release some of the requested information. You claim, however, that other responsive information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the information you submitted.<sup>1</sup>

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You contend that some of the submitted information is confidential under the

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. See Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Medical Practice Act (the "MPA"), as codified at subtitle B of title 3 of the Occupations Code. *See* Occ. Code § 151.001. The MPA governs the disclosure of medical records. Section 159.002 of the MPA provides in part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). This office has determined that in governing access to a specific subset of information, the MPA prevails over the more general provisions of chapter 552 of the Government Code. *See* Open Records Decision No. 598 (1991). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records be consistent with the authorized purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Medical records may be released only as permitted by the MPA. *See* Open Records Decision No. 598 (1991). We have reviewed the submitted documents and conclude that they contain no information that is confidential under the MPA.

The university also raises section 552.101 of the Government Code in conjunction with constitutional and common-law privacy. Constitutional privacy under section 552.101 protects two kinds of interests. *See* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987); *see also Whalen v. Roe*, 429 U.S. 589, 599-600 (1977). The first is the interest in independence in making certain important decisions related to the "zones of privacy," pertaining to marriage, procreation, contraception, family relationships, and child rearing and education, that have been recognized by the United States Supreme Court. *See* Open Records Decision No. 455 at 3-7 (1987); *see also Fado v. Coon*, 633 F.2d 1172 (5<sup>th</sup> Cir. 1981). The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See* Open Records Decision No. 455 at 6-7 (1987); *see also Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5<sup>th</sup> Cir. 1985), *reh'g denied*, 770 F.2d 1081 (1985), *cert. denied*, 474 U.S. 1062 (1986). This aspect of

constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* Open Records Decision No. 455 at 7 (1987). Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie v. City of Hedwig Village*, 765 F.2d at 492).

Section 552.101 of the Government Code also encompasses the common-law right to privacy. Common-law privacy under section 552.101 protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy encompasses the specific types of information that the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d at 683 (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). This office has since concluded that other types of information also are private under section 552.101. *See* Open Records Decision Nos. 659 at 4-5 (1999) (summarizing information attorney general has determined to be private), 470 at 4 (1987) (illness from severe emotional job-related stress), 455 at 9 (1987) (prescription drugs, illnesses, operations, and physical handicaps), 343 at 1-2 (1982) (references in emergency medical records to drug overdose, acute alcohol intoxication, obstetrical/gynecological illness, convulsions/seizures, or emotional/mental distress).

The university asserts that responsive home addresses and telephone numbers of juveniles who are members of the public are private under section 552.101. The university also contends that the submitted documents contain other private information. It is well-established that an individual's home address and telephone number are generally not confidential under section 552.101 in conjunction with either constitutional or common-law privacy. *See* Open Records Decision Nos. 554 at 3 (1990) (disclosure of person's home address and telephone number is not invasion of privacy), 455 at 7 (1987) (home addresses and telephone numbers do not qualify as "intimate aspects of human affairs"). Furthermore, a mere expectation of privacy on the part of the individual who provides information to a governmental body does not permit that information to be withheld under section 552.101. *See* Open Records Decision Nos. 479 at 1 (1987) (information not confidential simply because party that submitted information anticipated or requested confidentiality in doing so), 180 at 2 (1977) (information not excepted from disclosure solely because individual furnished it with expectation that access to it would be restricted), 169 at 6 (special circumstances required to protect information must be more than mere desire for privacy or generalized fear of harassment or retribution). Therefore, we conclude that the university may not withhold the responsive home addresses and telephone numbers of members of the public under section 552.101 in conjunction with constitutional or common-law privacy. We also conclude, however, that a small portion of the submitted information is protected by common-law privacy. We have marked the private information that the university must

withhold under section 552.101. None of the remaining information is excepted from disclosure under section 552.101 in conjunction with constitutional or common-law privacy.

The university also raises section 552.136 of the Government Code. This exception is applicable to certain account numbers. Section 552.136 provides as follows:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. We have marked bank account number information that the university must withhold under section 552.136.

Lastly, we address the university's claim under section 552.137 of the Government Code. This exception provides as follows:

(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. We have marked a personal e-mail address in the submitted documents that is confidential under section 552.137. You do not inform us that the individual to whom this e-mail address belongs has affirmatively consented to its public disclosure. Therefore, the university must withhold the marked e-mail address under section 552.137.

In summary, the university must withhold the marked information that is excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law

privacy. The university also must withhold the marked bank account number information that is confidential under section 552.136 and the marked e-mail address that is confidential under section 552.137. The university must release the rest of the submitted information.

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).

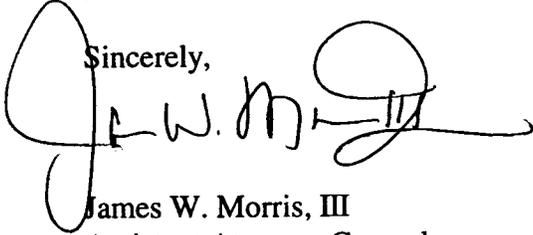
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 184526

Enc: Submitted documents

c: Mr. Cameron Jones  
8055 Sawback Trail  
Colorado Springs, Colorado 80919  
(w/o enclosures)