



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2006

Ms. R. Yvette Clark
General Counsel
Stephen F. Austin State University
P.O. Box 13065
Nacogdoches, Texas 75962-3065

OR2006-07786

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 258809.

Stephen F. Austin State University (the "university") received a request for information pertaining to the resignation of a named individual. You claim that the requested information is excepted from disclosure under sections 552.102 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that the submitted settlement agreement is subject to section 552.022 of the Government Code. Under section 552.022(a)(18), a settlement agreement to which a governmental body is a party is expressly public unless it is expressly confidential under other law. Section 552.111 of the Government Code is a discretionary exception under the Act, and does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.111). Accordingly, the university may not withhold the submitted information under section 552.111. However, section 552.102 of the Government Code does constitute other law for purposes of

¹We assume that, to the extent any additional responsive information existed when the university received the request for information, you have released it to the requestor. If not, then you must do so immediately. *See* Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

section 552.022; therefore, we will address whether that section requires you to withhold any of the submitted information.

Section 552.102(a) excepts from required public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." This exception applies when the release of information would result in a violation of the common-law right to privacy. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.). The common-law right to privacy is violated if the information (1) contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and (2) is of no legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). However, information about public employees' job performance or the reason for their dismissal, demotion, promotion, or resignation is not generally excepted from public disclosure. *See, e.g.*, Open Records Decision Nos. 470 (1987) (public employee's job performance does not generally constitute his private affairs), 455 (1987) (public employee's job performances or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). After review of your arguments and the submitted settlement agreement, we find that none of the information at issue may be withheld under section 552.102(a) in conjunction with common-law privacy, and it must be released 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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the

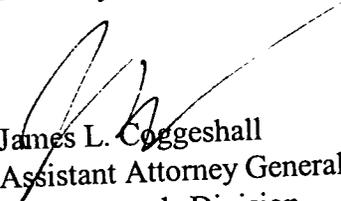
requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Office of the Attorney General 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/vh

Ref: ID# 258809

Enc. Submitted documents

c: Ms. Emily Taravella
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(w/o enclosures)