



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 10, 2006

Ms. Gita P. Bolt
Interim General Counsel
Office of General Counsel
Texas Southern University
3100 Cleburne Street
Houston, Texas 77004

OR2006-09062

Dear Ms. Bolt:

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# 256346.

Texas Southern University (the "university") received a request for (1) the personnel file of a former employee and (2) the letter of application, application, resume, and employment status of a second former employee. You state that you have provided the requestor with a portion of the requested information. However, you claim that the remaining information is exempted from disclosure under sections 552.101, 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section includes information made confidential under other statutes, including section 6103(a) of title 26 of the United States Code, which renders tax return information confidential. *See* Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Tax return information is defined as data furnished to or collected by the IRS with respect to the determination of possible existence of liability of any person under title 26 of the United States Code for any tax. *See* 26 U.S.C. § 6103(b). You contend that a portion of the submitted information contains "W-4 information." Upon review, however, we find that you have failed to demonstrate how any portion of the submitted information falls within the

definition of tax return information. *See id.* We conclude, therefore, that the university may not withhold any portion of the submitted information under section 552.101 of the Government Code as information deemed confidential by federal statute.

You also claim that some of the submitted information implicates the named university employees' right to privacy. Section 552.101 also encompasses the doctrine of common-law privacy. Gov't Code § 552.101. Section 552.102 excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See* Open Records Decision No. 327 at 2 (1982) (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). We will therefore consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

In *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), the Texas Supreme Court held that information is protected by common-law privacy if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of a legitimate concern to the public. *See Indus. Found.*, 540 S.W.2d at 685. This office has found that the following types of information are excepted from required public disclosure under common-law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

Upon review, we find that some of the submitted information must be withheld under sections 552.101 and 552.102 on the basis of common-law privacy. We have marked this information accordingly. However, you have failed to explain how any portion of the remaining submitted information constitutes highly intimate or embarrassing information the release of which would be highly objectionable to a reasonable person. *See* Open Records Decision Nos. 444 at 5-6 (1986) (public has interest in public employee's qualifications, work performance, and circumstances of employee's resignation or termination), 405 at 2-3 (1983) (public has interest in manner in which public employee performs job); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow); *and see* Gov't Code § 301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Thus, none of the remaining information may be withheld on this basis.

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). This exception further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. *Id.*; *see also* Open Records Decision No. 526 (1989). Thus, except for those portions of the documents that reveal the degree obtained and the courses taken, the university must withhold the transcripts submitted under section 552.102(b) of the Government Code.

Next, we address your claim under section 552.117 of the Government Code. Section 552.117(a)(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. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

The submitted information contains personal information of two university employees. Among the submitted documents are copies of two forms in which one employee timely elected to keep his home address and phone number confidential and one employee timely elected to keep her home address confidential prior to the date on which the university received this request. Accordingly, you must withhold the home addresses and phone number we have marked under section 552.117(a)(1) of the Government Code for these employees. We note, however, that the submitted election forms do not encompass these employees’ social security numbers and family member information. Accordingly, the university may not withhold these employees’ social security numbers or family member information under section 552.117.

Section 552.130 of the Government Code prohibits the release of 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. *See* Gov’t Code § 552.130. Accordingly, the university must withhold the Texas driver’s license number we have marked pursuant to section 552.130 of the Government Code.

Section 552.136 of the Government Code states that “[n]otwithstanding 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. Upon review of your arguments and the submitted information, we find that you have failed to explain how any of the information you have marked under section 552.136 constitutes an access device number. Accordingly, the university may not withhold any information on this basis.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail

address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. The e-mail addresses you have marked are not the type specifically excluded by section 552.137(c). Therefore, the university must withhold the e-mail addresses we have marked under section 552.137.

We further note that the submitted information contains social security numbers. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the university must withhold the social security numbers we have marked under section 552.147.¹

In summary, the university must withhold the marked (1) confidential information under sections 552.101 and 552.102 in conjunction with common-law privacy, (2) transcript information under section 552.102(b), (3) personal information under section 552.117, (4) Texas driver's license number under section 552.130, (5) e-mail addresses under section 552.137, and (6) social security numbers under section 552.147. The remaining information must be released.

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

¹We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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. 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,



Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/ir

Ref: ID# 256346

Enc. Submitted documents

c: Mr. Frank Watson
10910 Whitehorn Street
Houston, Texas 77016
(w/o enclosures)