



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 5, 2008

Ms. Carol Longoria
The University of Texas System
Office of the General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2008-06085

Dear Ms. Longoria:

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# 308209.

The University of Texas at San Antonio (the "university") received a request for the personnel files and payroll information of five specified employees. You state that the requestor excluded benefit records in the personnel files from his request in an e-mail to the university and that the university has therefore not included such information in the submitted information. You claim that the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹ We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

You contend that the requested information is excepted from disclosure in its entirety under section 552.101 based on the "special circumstances" aspect of common-law privacy. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses the common-law right of privacy. Ordinarily, information is protected by common-law privacy only if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). However,

¹We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information may also be withheld under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." *See* Open Records Decision No. 169 (1977). In Open Records Decision No. 169, we considered the personal safety concerns of public employees and recognized that there may be specific instances where "special circumstances" exist to except from public disclosure some of the employees' addresses. *See* Open Records Decision No. 123 (1976). In that decision, the employees demonstrated that their lives would be placed in danger if their addresses were released to the public. ORD 169 at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* at 6.

In this instance you argue that the requested personnel and payroll files should be excepted from disclosure in their entirety because the requestor has shown a pattern of using the legal system as a vehicle to harass university employees and students both personally and professionally. You also assert and provide documentation that the requestor wants to review these personnel files to look for discrepancies in the backgrounds of the named employees. However, neither of these acts constitutes threats against the life or safety of the named employees. Additionally, you have not provided any demonstration that the requestor has otherwise made any credible threats against the life or safety of any of the named employees. Upon review, we determine that you have not established that release of the personnel information at issue would cause any of the individuals to face an imminent threat of physical harm. Accordingly, you have not shown special circumstances sufficient to justify withholding any of the requested information from public disclosure on that basis.

In the alternative, you argue that the requested information should be withheld in its entirety under constitutional privacy. 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. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *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. *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)). In this instance, the information requested is the personnel and payroll files of university employees. This information pertains solely to the job qualifications and conduct of public employees. As such, this information does not fall within the zones of privacy, nor does it implicate the named employees' privacy interests for the purposes of constitutional privacy. Accordingly, the university may not withhold any of the requested information under constitutional privacy.

However, we note that one of the personnel files contains information protected by common-law privacy. As discussed above, common-law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The common-law right to privacy encompasses the specific types of information that are held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has determined that other types of information also are private under section 552.101. *See generally* Open Records Decision No. 659 at 4-5 (1999) (summarizing information attorney general has held to be private). We find a small portion of the submitted information in one of the submitted personnel files is intimate or embarrassing and of no legitimate public interest. We have marked this information as confidential under section 552.101 in conjunction with common-law privacy. However, none of the remaining information may be withheld on the basis of common-law privacy.

Next, the submitted information contains information that is confidential by law. Section 552.101 also encompasses information that other statutes make confidential. Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). In this instance, the release of the submitted Forms I-9 would be "for purposes other than for enforcement" of the applicable federal law. A Form I-9 may only be released for purposes of compliance with the federal laws and regulations governing the employment verification system. Therefore, the university must withhold the Forms I-9 under section 552.101 in conjunction with section 1324a of title 8 of the United States Code.

Next, you assert that some of the information you have marked in the submitted information is excepted under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). We note, that the post office box numbers you have marked do not constitute "home addresses" for purposes of section 552.117.² Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or

²*See generally*, Open Records Decision No. 622 at 4 (1994) (purpose of confidentiality provision excepting public employee's personal information from required disclosure is to protect them from being harassed *at home*) (citing House Committee on State Affairs, Bill Analysis, H.B. 1976, 69th Leg. (1985)).

former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request under section 552.024 that the information be kept confidential. We note that you have included election forms for all of the named employees. Three of the named individuals requested to keep some of their information confidential. We have marked information in the submitted documents from these three personnel files that the university must withhold under section 552.117. Two of the named individuals, however, did not elect to keep any of their information confidential. Therefore the university may not withhold any information in those personnel files under section 552.117.

We note that the submitted information contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that "relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]"³ Gov't Code § 552.130(a)(1). The university must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code.

We next address your assertion that the University of Texas Electronic Identification Numbers and/or Banner Ids ("UTEIDs") are excepted from disclosure under section 552.136 of the Government Code. 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. You assert that the UTEIDs may be used, in conjunction with the user's password, to access information, which you assert is a "thing of value." After reviewing your arguments, we conclude you have failed to demonstrate that the information

³The Office of the Attorney General will raise a mandatory exception like sections 552.130 and 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

you seek to protect is a "thing of value" for the purposes of section 552.136. Therefore, the university may not withhold the UTEIDs under section 552.136. However, the submitted information also includes a credit card number that does not belong to the requestor. The university must withhold the credit card number we have marked under section 552.136 of the Government Code.

Finally, the submitted information contains the personal e-mail address of one of the named employees. Section 552.137 of the Government Code states that "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," unless the owner of the e-mail address has affirmatively consented to its public disclosure.⁴ *Id.* § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). We have marked the personal e-mail address in the submitted information that the university must withhold under section 552.137 unless the owner of the e-mail address has affirmatively consented to its disclosure.

In summary, the university must withhold: (1) the information we have marked in one of the personnel files under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the Form I-9 we have marked under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code; (3) the information we have marked in three of the submitted personnel files under section 552.117(a)(1) of the Government Code; (4) the Texas driver's license number we have marked under section 552.130 of the Government Code; (5) the credit card number we have marked under section 552.136 of the Government Code; and (6) the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address has affirmatively consented to its public disclosure. The remaining information must be released to the requestor.⁵

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 file suit in

⁴The Office of the Attorney General will raise a mandatory exception like section 552.137 of the Government Code on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

⁵We note, 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.

Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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,



Laura E. Ream
Assistant Attorney General
Open Records Division

LER/jb

Ref: ID# 308209

Enc. Submitted documents

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(w/o enclosures)