



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 26, 2009

Mr. Scott A. Kelly
Deputy General Counsel
Texas A&M University Systems
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2009-01000

Dear Mr. Kelly:

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# 333826.

Tarleton State University (the "university") received a request for all records regarding two named individuals and a specified address after a specified date. You state that you have released a portion of the requested information. You claim that portions of the remaining information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy. 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). 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. 540 S.W.2d at 683. Upon review, we find that the information you have marked in Exhibit "B" is protected by common-law privacy and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses information made confidential by statute, such as section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information in Exhibit "C" relates to an investigation of possible child neglect conducted by the Tarleton State University Police Department. *See id.* § 261.001(4)(A) (definition of neglect). Upon review, we find that this information falls within the scope of section 261.201. Additionally, there is no indication that the university has adopted a rule governing the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, the information in Exhibit "C" is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Therefore, the university must withhold Exhibit "C" in its entirety under section 552.101 of the Government Code.

Next, we note that the remaining information contains information subject to section 552.130 of the Government Code.¹ This section excepts from disclosure information relating to a Texas motor vehicle driver's license. Gov't Code § 552.130. We have marked the information in Exhibit "B" that the university must withhold under section 552.130 of the Government Code.

Further, we note the remaining information contains an e-mail address that is subject to section 552.137 of the Government Code. Section 552.137 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 [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 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 e-mail address in Exhibit "B" that the university must withhold under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consented to its disclosure.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

In summary, (1) the university must withhold the information you have marked in Exhibit "B" under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the university must withhold Exhibit "C" in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (3) the university must withhold the Texas driver's license information we have marked in Exhibit "B" under section 552.130 of the Government Code; and (4) the university must withhold the e-mail address in Exhibit "B" under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consented to its disclosure. The remaining information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 333826

Enc. Submitted documents

c: Requestor
(w/o enclosures)