



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 28, 2009

Ms. Neera Chatterjee
Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2009-18257

Dear Ms. Chatterjee:

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# 365662.

The University of Texas Southwestern Medical Center at Dallas (the "university") received a request for four categories of information pertaining to research on the Gulf War Illness. You state the university has released the information responsive to three of the categories and some of the information responsive to the last category. You claim that portions of the submitted information are excepted from disclosure under section 552.1235 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.1235 of the Government Code excepts from disclosure "the name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education[.]" Gov't Code § 552.1235(a). "Institution of higher education" is defined by section 61.003 of the Education Code. *Id.* § 552.1235(c). Section 61.003 defines an "institution of higher education" as any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section. *See* Educ. Code § 61.003.

You seek to withhold portions of the submitted information under section 552.1235. You contend the information you have marked either identifies or tends to identify donors to the university. Based upon your representations and our review, we agree the information we have marked identifies persons as actual donors to the university. Accordingly, we conclude the university must withhold the information we have marked under section 552.1235 of the Government Code. However, we find you have failed to explain how the remaining information you have marked identifies or tends to identify donors to the university. Accordingly, none of the remaining information may be withheld under section 552.1235 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This section encompasses the doctrine of common-law privacy. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) 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. *Id.* at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Because "the right of privacy is purely personal," that right "terminates upon the death of the person whose privacy is invaded." *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref'd n.r.e.); Open Records Decision No. 272 at 1 (1981).

You have informed this office that a portion of the remaining information pertains to a living individual suffering from a medical condition. Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the university must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university must withhold the information we have marked under section 552.1235 of the Government Code. The university must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.

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

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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 365662

Enc. Submitted documents

c: Requestor
(w/o enclosures)