



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 22, 2013

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

OR2013-06563

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# 484766 (OGC # 148378).

The University of Texas at Dallas (the "university") received a request for the personnel files of five named employees. You state the university is releasing some of the information to the requestor. You inform us you will redact information in accordance with Open Records

Decision No. 684 (2009)<sup>1</sup> and pursuant to sections 552.024(c)<sup>2</sup>, 552.130(c)<sup>3</sup>, 552.136(c)<sup>4</sup>, and 552.147(b)<sup>5</sup> of the Government Code. You claim some of the submitted information is not subject to the Act and some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.139 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>6</sup>

You assert the University of Texas Electronic Identification Numbers (“UTEIDs”) contained in the information at issue are not subject to the Act. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You inform our office that, when combined with an individual’s password, the UTEID serves as “the required log on protocol to access the computer mainframe, the [u]niversity’s centralized hub that runs all its high-level electronic functions.” You indicate the UTEIDs

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<sup>1</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including a form I-9 under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, a W-4 form under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, L-2 and L-3 declarations under section 552.101 of the Government Code in conjunction with section 1701.306 of the Occupations Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general opinion. *See* ORD 684 at 14.

<sup>2</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c)(2).

<sup>3</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsections 552.130(a)(1) without the necessity of seeking a decision from the attorney general. *See* Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

<sup>4</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov’t Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

<sup>5</sup>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. *See* Gov’t Code § 552.147(b).

<sup>6</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

are used solely to access the university's computer mainframe and have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the UTEIDs contained in the information at issue do not constitute public information under section 552.002 of the Government Code. Therefore, the submitted UTEIDs are not subject to the Act and need not be released to the requestor.

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. Section 552.101 encompasses confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See id.* § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. Accordingly, the university must withhold the CHRI that you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code.<sup>7</sup>

Section 552.101 of the Government Code also encompasses section 1701.454 of the Occupations Code, which governs the public availability of information submitted to the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE") under subchapter J of chapter 1701 of the Occupations Code. Section 1701.454 provides as follows:

(a) All information submitted to the [TCLEOSE] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Except as provided by this subchapter, a [TCLEOSE] member or other person may not release information submitted under this subchapter.

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<sup>7</sup>As our ruling is dispositive, we do not address your remaining arguments against disclosure of this information.

Occ. Code § 1701.454. You seek to withhold an F5R form, TCLEOSE education information, and completed course information under section 1701.454. We note, however, that this statute is applicable only to a report or statement submitted to the commission under subchapter J of chapter 1701 of the Occupations Code. *See id.* § 1701.454(a). The only report or statement found in subchapter J is a Form F-5. *See id.* § 1701.452. We therefore conclude the university may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 552.101 of the Government Code also encompasses section 258.102 of the Occupations Code. Section 258.102 provides in pertinent part as follows:

(a) The following information is privileged and may not be disclosed except as provided by this subchapter:

- (1) a communication between a dentist and a patient that relates to a professional service provided by the dentist; and
- (2) a dental record.

*Id.* § 258.102(a). A “dental record” means dental information about a patient that is created or maintained by a dentist and relates to the history or treatment of the patient. *See id.* § 258.101(1). Upon review, we find the information we have marked constitutes dental records the university must withhold under section 552.101 of the Government Code in conjunction with section 258.102 of the Occupations Code.<sup>8</sup>

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”). Medical records are confidential under the MPA, subtitle B of title 3 of the Occupations Code. *See Id.* §§ 151.001-165.160. Section 159.002 of the MPA provides in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in

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<sup>8</sup>As our ruling is dispositive, we do not address your other argument to withhold this information.

Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find the information we have marked constitutes medical records for purposes of the MPA, and must be withheld on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information 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 legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). This office has also determined that a public employee's net pay is protected by common-law privacy even though it involves a financial transaction between the employee and the governmental body. *See* Attorney General Opinion GA-0572 at 3-5 (2007) (stating that net salary necessarily involves disclosure of information about personal financial decisions and is background financial information about a given individual that is not of legitimate concern to the public). Upon review, we find 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. However, you have not demonstrated how the remaining information is highly intimate or embarrassing and not of legitimate public concern. Thus, the remaining information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.101 of the Government Code also encompasses the constitutional right to privacy, which protects two kinds of interests. *See Whalen v. Roe*, 429 U.S. 589, 599-600 (1977); *see also* Open Records Decision Nos. 600 at 3-5 (1992), 478 at 4 (1987), 455 at 3-7 (1987). The first is the interest in independence in making certain important decisions related to the "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *See Fado v. Coon*, 633 F.2d 1172 (5th Cir. 1981); *see also* ORD 455 at 3-7. The second constitutionally protected privacy interest is in freedom from public disclosure of certain personal matters. *See Ramie v. City of Hedwig Village, Tex.*, 765 F.2d 490 (5th Cir.1985);

*see also* ORD 455 at 6-7. This aspect of constitutional privacy balances the individual's privacy interest against the public's interest in the information. *See* ORD 455 at 7. Constitutional privacy under section 552.101 is reserved for "the most intimate aspects of human affairs." *Id.* at 8 (quoting *Ramie*, 765 F.2d at 492). Upon review, we find no portion of the remaining information falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Consequently, the university may not withhold any of the remaining information under section 552.101 in conjunction with constitutional privacy.

Section 552.102 of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we agree the university must withhold the dates of birth you have marked under section 552.102 of the Government Code.

We note portions of the submitted information are subject to section 552.136 of the Government Code.<sup>9</sup> Section 552.136 states, "[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. Accordingly, we conclude the university must withhold the account numbers we have marked under section 552.136 of the Government Code.

The remaining information contains a photocopy of an officer's identification card. Section 552.139(b)(3) of the Government Code provides, "a photocopy or other copy of an identification badge issued to an official or employee of a governmental body" is confidential. Gov't Code § 552.139(b)(3). Therefore, the university must withhold the photocopy of the identification card under section 552.139(b)(3) of the Government Code.

In summary, the submitted UTEIDs are not subject to the Act and need not be released to the requestor. The university must withhold the CHRI that you have marked under section 552.101 of the Government Code in conjunction with federal law and chapter 411 of the Government Code. The university must withhold the dental records we have marked under section 552.101 of the Government Code in conjunction with section 258.102 of the Occupations Code. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The university must withhold the information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and the dates of birth you have marked under

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<sup>9</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.102 of the Government Code. The university must withhold the account number we have marked under section 552.136 of the Government Code. The university must withhold the photocopy of the identification card under section 552.139(b)(3) of the Government Code. The university must release the remaining information.

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](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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 484766

Enc. Submitted documents

c: Requestor  
(w/o enclosures)