



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2014

Ms. Talibah Young
Senior Assistant General Counsel
Office of the General Counsel
University of Houston System
311 E. Cullen Building
Houston, Texas 77204-2028

OR2014-08822

Dear Ms. Young:

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# 523656.

The University of Houston (the "university") received three requests, from the same requestor, for the employee and disciplinary files of a named professor. You state you will redact certain information in accordance with Open Records Decision No. 684 (2009).¹ You also state you will redact a social security number pursuant to section 552.147(b) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 the doctrine of common-law privacy, which

¹Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision, including direct deposit authorization forms under section 552.101 of the Government Code in conjunction with common-law privacy, a Form I-9 and its attachments under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, W-4 Forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code, and an e-mail address of a member of the public under section 552.137 of the Government Code.

²Section 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. Gov't Code § 552.147(b).

protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has found that personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. See Open Records Decision No. 600 (1992) (public employee's withholding allowance certificate, designation of beneficiary of employee's retirement benefits, direct deposit authorization, and employee's decisions regarding voluntary benefits programs, among others, 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). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. See Open Records Decision Nos. 600 at 9 (information revealing that employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (1990) (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Upon review, we find some of the marked information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.³ However, we find no portion of the remaining information is highly intimate or embarrassing information of no legitimate public concern and the remaining information at issue may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.102(a) 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). We understand you to assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the Government Code as discussed above. See *Indus. Found.*, 540 S.W.2d at 685. In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the Third Court of Appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court expressly disagreed with *Hubert's* interpretation of section 552.102(a) and held its privacy standard differs from the *Industrial Foundation* test under section 552.101. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The supreme court then considered the applicability of

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

section 552.102, and 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. *See id.* at 346. Accordingly, the university must withhold the date of birth you have marked, and the additional date of birth we have marked, under section 552.102(a) of the Government Code. However, we find none of the remaining information is subject to section 552.102(a) of the Government Code and none of it may be withheld on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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. Gov't Code § 552.117(a)(1). 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)*. Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of current or former officials or employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. You state, and submit documentation demonstrating, the employee whose information is at issue timely elected confidentiality under section 552.024 of the Government Code. We note some of the information you have marked is not subject to section 552.117(a)(1) of the Government Code. Accordingly, except for the information we have marked for release, the university must withhold the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code.

Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], 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(b). Section 552.136(a) defines “access device” as “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 . . . obtain money, goods, services, or another thing of value [[or] initiate a transfer of funds other than a transfer originated solely by paper instrument.” *See id.* § 552.136(a). You state you will redact access device numbers subject to section 552.136 pursuant to Open Records Decision No. 684.⁴ Upon review, we find some of the information at issue consists of access device numbers for purposes of section 552.136 of the Government Code. Therefore, with the exception of the information we have marked for release, the university must withhold the access device numbers you have marked under

⁴On September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in subsection 552.136(b) without the necessity of seeking a decision from the attorney general. *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(e). Thus, the statutory amendments to section 552.136 of the Government Code superceded Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsection 552.136(b) in accordance with section 552.136, not Open Records Decision No. 684.

section 552.136 of the Government Code. However, we find you have not explained how the information we have marked for release constitutes access device numbers for purposes of section 552.136. Accordingly, you have failed to demonstrate the applicability of section 552.136 of the Government Code to this information and it may not be withheld on that basis.

In summary, the university must withhold: (1) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the date of birth you have marked, and the additional date of birth we have marked, under section 552.102(a) of the Government Code; (3) except for the information we have marked for release, the information you have marked, and the additional information we have marked, under section 552.117(a)(1) of the Government Code; and (4) except for the information we have marked for release, the information you have marked under section 552.136 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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 523656

Enc. Submitted documents

c: Requestor
(w/o enclosures)