



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 30, 2014

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

OR2014-09257

Dear Ms. Tynan:

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# 524379 (OGC Nos. 154763 & 154858).

The University of Texas System (the "system") received two requests from different requestors for all communications between any Texas legislator and any member of the system's board of regents, chancellor, vice chancellor, or chief governmental relations officer during a specified time period and regarding any state or system business.<sup>1</sup> You state the system will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>2</sup> You also state the system will

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<sup>1</sup>You state the system sought and received clarification of the first request for information. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Section 552.117 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. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

withhold e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>3</sup> You indicate the system is releasing some of the requested information. You claim some of the submitted information is not subject to the Act. Additionally, you claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.106 of the Government Code. You also state release of some of the submitted information may implicate the proprietary interests of The University of Texas Law School Foundation (the "foundation"). Accordingly, you state, and provide documentation showing, you notified the foundation of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>4</sup>

Initially, you indicate some of the submitted information, which you have marked, is not responsive to the instant requests for information. Upon review, we agree the information at issue is not responsive to the requests. This ruling does not address the public availability of any information that is not responsive to the request and the system is not required to release such information in response to this request.

Next, you claim some of the responsive information is not subject to the Act, but is instead governed by sections 306.003 and 306.004 of the Government Code. Section 306.003 of the Government Code provides, in part, as follows:

(a) Records of a member of the legislature or the lieutenant governor that are composed exclusively of memoranda of communications with residents of this state and of personal information concerning the person communicating with the member or lieutenant governor are confidential. However, the member or the lieutenant governor may disclose all or a part of a record to which this subsection applies, and that disclosure does not violate the law of this state.

(b) The method used to store or maintain a record covered by Subsection (a) does not affect the confidentiality of the record.

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<sup>3</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including 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 decision.

<sup>4</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.

Gov't Code § 306.003(a)-(b). Section 306.003 pertains to only records of a member of the legislature or the lieutenant governor. *See id.*; Open Records Decision No. 648 (1996). The responsive information at issue, which you have marked, consists of records of the system rather than those of a member of the legislature or the lieutenant governor. Therefore, we conclude that section 306.003 does not apply to the information you marked.

While section 306.003 applies to records that are composed of memoranda of communications and records of personal information of a legislator or the lieutenant governor, section 306.004 refers to the communications themselves and provides as follows:

(a) To ensure the right of the citizens of this state to petition state government, as guaranteed by Article I, Section 27, of the Texas Constitution, by protecting the confidentiality of communications of citizens with a member of the legislature or the lieutenant governor, the public disclosure of all or part of a written or otherwise recorded communication from a citizen of this state received by a member or the lieutenant governor in his official capacity is prohibited unless:

(1) the citizen expressly or by clear implication authorizes the disclosure;

(2) the communication is of a type that is expressly authorized by statute to be disclosed; or

(3) the official determines that the disclosure does not constitute an unwarranted invasion of personal privacy of the communicator or another person.

(b) This section does not apply to a communication to a member of the legislature or the lieutenant governor from a public official or public employee acting in an official capacity.

(c) A member or the lieutenant governor may elect to disclose all or part of a communication to which this section applies, and that disclosure does not violate the law of this state.

Gov't Code § 306.004(a)-(c). Section 306.004(a) applies to "a written or otherwise recorded communication from a citizen of this state" received by a member of the legislature or the lieutenant governor in his official capacity. *Id.* § 306.004(a). For the purposes of section 306.004, a "communication" includes "conversation, correspondence, and electronic communication." *Id.* § 306.001. We note a legislator or the lieutenant governor has the discretion to disclose all or part of records that are subject to section 306.004(a). *Id.* § 306.004(c). However, section 306.004 does not apply to a communication to a member

of the legislature or the lieutenant governor from a public official or public employee acting in an official capacity. *Id.* § 306.004(b).

The responsive information you seek to withhold does not consist of communications of a member of the legislature or the lieutenant governor with a citizen of this state. Rather, the records are communications between a member of the legislature and system employees acting in their official capacities. Therefore, we conclude section 306.004 is inapplicable to the responsive communications at issue, and we find the communications at issue are system records that are subject to the Act. *See id.* Accordingly, we will address your remaining arguments against disclosure of this 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. This section encompasses information that other statutes make confidential. Section 6103 of title 26 of the United States Code makes certain federal tax returns and tax return information confidential. *See* 26 U.S.C. § 6103(a); *see also id.* § 6103(b)(1)–(2) (defining “return” and “return information”). However, section 6104 of title 26 provides for the disclosure of tax return information in certain situations:

(d) Public inspection of certain annual returns[.]--

(1) In general.--In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a) --

(A) a copy of --

(i) the annual return filed under section 6033 . . . by such organization,

...

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization and . . .

(B) upon request of an individual made at such principal office . . . , a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(2) 3-year limitation on inspection of returns.--Paragraph (1) shall apply to an annual return filed under section 6011 or 6033 only during the 3-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

*Id.* § 6104(d)(1)–(2); *see* 26 C.F.R. § 301.6104(d)-1(a). Thus, a section 501(c) or (d) tax-exempt organization must generally make its annual returns available for public inspection for a period of three years from the last day prescribed for filing.

The system states the foundation, which is the entity that submitted the forms at issue, is a section 501(c) tax-exempt organization. The system further states the date of filing for the information at issue was more than three years prior to the date the system received the request for information. Thus, based on these representations, we determine the three-year inspection period has lapsed regarding the information, and the requestor does not have a right of inspection under section 6104. Therefore, the system must withhold the information at issue, which you have marked, under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. *See* Open Records Decision Nos. 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we agree the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the system must withhold the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.106 of the Government Code excepts from disclosure “[a] draft or working paper involved in the preparation of proposed legislation[.]” Gov’t Code § 552.106(a). Section 552.106(a) ordinarily applies only to persons with a responsibility to prepare information and proposals for a legislative body. *See* Open Records Decision No. 460 at 1 (1987). The purpose of this exception is to encourage frank discussion on policy matters

between the subordinates or advisors of a legislative body and the members of the legislative body. *Id.* at 2. Therefore, section 552.106 is applicable only to the policy judgments, recommendations, and proposals of persons who are involved in the preparation of proposed legislation and who have an official responsibility to provide such information to members of the legislative body. *Id.* Section 552.106 does not protect purely factual information from public disclosure. *See id.* at 2. However, a comparison or analysis of factual information prepared to support proposed legislation is within the scope of section 552.106. *See* ORD 460 at 2.

You assert the information you have marked “consists of communications regarding legislation and other working drafts of legislation that [the system] prepared in response to legislative inquiries.” Upon review, we find the information you have marked under section 552.106 constitutes advice, opinion, analysis, and recommendations related to the preparation of proposed legislation for the purposes of section 552.106. Accordingly, the system may withhold the information you have marked under section 552.106 of the Government Code.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body’s notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See id.* § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from the foundation explaining why the remaining responsive information should not be released. Therefore, we have no basis to conclude the foundation has a protected proprietary interest in the remaining responsive information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the system may not withhold the remaining responsive information on the basis of any proprietary interest the foundation may have in the information.

In summary, the system must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code and the information you marked under section 552.101 of the Government Code in conjunction with common-law privacy. The system may withhold the information you have marked under section 552.106 of the Government Code. The system must release the remaining responsive 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](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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 524379

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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