



February 5, 2015

Ms. Audra Gonzalez Welter
Attorney & Public Information Coordinator
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2015-02306

Dear Ms. Welter:

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# 554228 (OGC# 159349).

The University of Texas Medical Branch at Galveston (the "university") received a request for information pertaining to the revocation of the requestor's security clearance and termination. The university states it will release some of the requested information, but claims some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. The university also informs us it notified the Texas Department of Criminal Justice of the university's receipt of the request for information. *See Gov't Code* § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exception and reviewed the submitted representative sample of information.¹

Initially, we note the university has marked some of the submitted information as being nonresponsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the university is not required to release this information in response to this request.

¹We 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.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses section 181.006 of the Health and Safety Code, which states, in part, “for a covered entity that is a governmental unit, an individual’s protected health information . . . is not public information and is not subject to disclosure under [the Act].” Health & Safety Code § 181.006(2). Section 181.001(a) states, “[u]nless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards [(“HIPAA”).]” *Id.* § 181.001(a). Accordingly, as chapter 181 does not define “protected health information,” we turn to HIPAA’s definition of the term. HIPAA defines “protected health information” as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. 45 C.F.R. § 160.103. But “protected health information” excludes individually identifiable health information in employment records held by a covered entity in its role as employer. *See id.*

You assert the information you have marked under section 181.006 is maintained by the university as a health care provider and relates to the provision of health care. However, this information is contained in the requestor’s employment records and the university holds it in the university’s role as an employer. Thus, the university has failed to demonstrate the information at issue consists of protected health information that is confidential under section 181.006, and the university may not withhold it under section 552.101 on that ground.

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). Upon review, we agree the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must release the remaining information to the requestor.²

²The remaining information contains a social security number. 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 under the Act. *See* Gov’t Code § 552.147(b). However, the requestor has a right to her own social security number. *See id.* § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person’s representative, solely on grounds that information is considered confidential by privacy principles).

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/cbz

Ref: ID# 554228

Enc. Submitted documents

c: Requestor
(w/o enclosures)