



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 24, 2015

Mr. Chester S. Beattie, Jr.
Assistant General Counsel
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711

OR2015-05613

Dear Mr. Beattie:

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# 557278.

The Texas Higher Education Coordinating Board (the "board") received a request for all communications and documentation from specified personnel in which the requestor is the focus, and certain research information regarding the requestor's former work computer.¹ You state the board will provide some of the requested information to the requestor. You claim the remaining information is excepted from disclosure under sections 552.101, 552.112, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You state the board sought and received clarification of the information requested. *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).

²We 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.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.³ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have submitted redacted and unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your arguments against disclosure of the submitted information.

Next, we note you have redacted partial account numbers in the submitted information. Section 552.136(c) 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.⁴ *See* Gov't Code § 552.136(c). Section 552.136(b) of the Government Code provides, "[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." *Id.* § 552.136(b); *see id.* § 552.136(a) (defining "access device"). We note, however, some of the account numbers you redacted are the requestor's account numbers. Because section 552.136 protects personal privacy, the requestor has a right of access to his own account numbers under section 552.023 of the Government Code, and this information may not be withheld from him under section 552.136. *See id.* § 552.023(a); *see also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Accordingly, the board may not withhold the requestor's account numbers you redacted under section 552.136 of the Government Code. However, we are unable to determine whether or not the remaining account number you redacted, which we have marked, belongs to the requestor. Therefore, if the account number we have marked belongs to the requestor, the board may not withhold it under section 552.136 of the Government Code. If the account number we have marked does not belong to the requestor, the board must withhold this information under section 552.136 of the Government Code.

³A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

⁴If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e) of the Government Code. *See* Gov't Code § 552.136(d), (e).

You have also redacted portions of e-mail addresses in the remaining information. Open Records Decision No. 684 (2009) 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. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the board must withhold the personal e-mail address information you have redacted, as well as the additional information we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to the public disclosure of their e-mail addresses.

We note the board has redacted portions of the remaining information. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov’t Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the board should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov’t Code § 552.302.

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. Section 552.101 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. However, we note there is a legitimate public interest in an applicant’s background and qualifications for government employment. *See* Open Records Decisions Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern), 542 (1990), 470 at 4 (1986) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (scope of public employee privacy is narrow). Upon review, we find you have not demonstrated how any of the remaining information is highly intimate or embarrassing and not of legitimate public concern. Consequently, the board may not

withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.112(a) of the Government Code excepts from public disclosure “information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities, or both.” Gov’t Code § 552.112(a). You generally assert some of the remaining information is excepted from disclosure under section 552.112(a) because the board “operates and maintains several college loan programs that issue funds to Texas borrowers and guarantor[s], who seek higher education.” However, we find you have failed to demonstrate how any of the remaining information relates to examination, operating, or condition reports prepared by or for the board or another agency responsible for the regulation or supervision of financial institutions or securities, or both. Therefore, the board may not withhold any of the remaining information under section 552.112(a) of the Government Code.

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and 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. *Id.* § 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 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Upon review, we find you have failed to demonstrate how any of the remaining information consists of current or former officials’ or employees’ home addresses and telephone numbers, emergency contact information, social security numbers, or family member information. Therefore, the board may not withhold any of the remaining information under section 552.117(a)(1) of the Government Code.

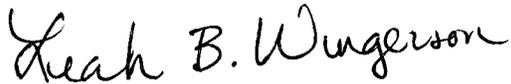
In summary, if the account number we have marked does not belong to the requestor, the board must withhold this information under section 552.136 of the Government Code. The board must withhold the personal e-mail address information you have redacted, as well as the additional information we have marked, under section 552.137 of the Government Code, unless the owners affirmatively consent to the public disclosure of their e-mail addresses. The board must release the remaining information.⁵

⁵We note the remaining information includes social security numbers. 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. Gov’t Code § 552.147(b).

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,

A handwritten signature in black ink that reads "Leah B. Wingerson". The signature is written in a cursive style with a large initial "L".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 557278

Enc. Submitted documents

c: Requestor
(w/o enclosures)