



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Ms. Ana Vieira Ayala  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2902

OR2015-09188A

Dear Ms. Ayala:

This office issued Open Records Letter No. 2015-09188 (2015) on May 12, 2015. We have examined this ruling and determined that an error was made in its issuance. When this office determines that an error was made in the decision process under sections 552.301 and 552.306 of the Government Code, and that error resulted in an incorrect decision, we will correct the previously issued ruling. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on May 12, 2015. *See generally* Gov't Code § 552.011 (providing that Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act ("Act")). This ruling was assigned ID# 572860 (OGC# 160469).

The University of Texas Southwestern Medical Center (the "center") received a request for documents showing the total amount of all compensation provided to a named individual and all e-mails sent to and received from the named individual's e-mail account and five other e-mail accounts during 2011, 2014, and 2015. You state you have released some of the requested information. We understand the center will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, account numbers under section 552.136(c) of the Government Code, and e-mail addresses under section 552.137 of the Government Code pursuant to Open Records

Decision No. 684 (2009).<sup>1</sup> You claim some of the submitted information is not subject to the Act. You also claim some the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we understand you to assert the information you have marked is not responsive to the instant request for information. This ruling does not address the public availability of any information that is not responsive to the request and the center is not required to release such information in response to this request.

You contend the information you have marked is not subject to the Act. The Act is applicable only to “public information.” *See id.* §§ 552.002, .021. Section 552.002(a) defines “public information” as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
  - (A) owns the information;
  - (B) has a right of access to the information; or
  - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

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<sup>1</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)(2). Section 552.136(c) of the Government Code allows a governmental body to redact the information described in section 552.136(b) without the necessity of seeking a decision from the attorney general. *See id.* § 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). 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>2</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.

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

*Id.* § 552.002(a). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You inform us the information you have marked consists of personal e-mails that have no connection with the center's business and constitute incidental use of e-mail by a center employee. You state center's policy allows for incidental use of e-mail by employees and officials. You further state the use of center resources to create and maintain the marked information was *de minimis*. See Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). Based on your representations and our review of the information at issue, we agree the information you have marked does not constitute "information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the center. See Gov't Code § 552.002. Therefore, we conclude the personal correspondence you have marked is not subject to the Act and need not be released in response to the present request for information.

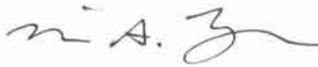
Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, 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 highly intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is generally highly intimate or embarrassing. See Open Records Decision Nos. 600 (1992), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). This office has found financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy. See Open Records Decision Nos. 600 (designation of beneficiary of employee's retirement benefits, direct deposit authorization, and forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 523 (1989). Upon review, we find the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the center must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the information you have marked is not subject to the Act and need not be released in response to the present request for information. The center must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The center 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,

A handwritten signature in black ink, appearing to read "N.A. Ybarra".

Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/cbz

Ref: ID# 572860

Enc. Submitted documents

c: Requestor  
(w/o enclosures)