



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 10, 2015

Mr. Ronny H. Wall  
Associate General Counsel  
Texas Tech University System  
P.O. Box 42021  
Lubbock, Texas 79409-2021

OR2015-11367

Dear Mr. Wall:

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# 566435.

Texas Tech University (the "university") received a request for e-mails concerning a named individual sent from two specified university departments during a specified time period. You state you will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. Additionally, you state you have notified interested third parties of the request and of their right to submit comments to this office as to why the submitted information should not be released to the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from an attorney representing interested third parties and from the requestor. We have considered the submitted arguments 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 common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas 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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. We note the public generally has a legitimate interest in information that relates to public employment and public employees. 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 (1987) (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). Upon review, we find no portion of the submitted information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the university may not withhold any of the submitted information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 of the Government Code also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy" which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). After review of the submitted information, we find you have failed to demonstrate how any portion of the information at issue falls within the zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, the university may not withhold any of the submitted information under section 552.101 on the basis of constitutional privacy.

Section 552.137 of the Government Code exempts 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). *Id.* § 552.137(a)-(c). The e-mail addresses at issue are not a type specifically excluded by section 552.137(c) of the Government Code. Accordingly, the university must withhold the e-mail address you have marked, and the e-mail address we have marked, under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure.

We note some of the remaining information may be subject to section 552.117 of the Government Code.<sup>1</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former 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). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). 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 a current or former 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. Accordingly, to the extent the individual whose information is at issue timely requested confidentiality under section 552.024, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the university may withhold the cellular telephone number we have marked only if the cellular telephone service is not paid for by a governmental body. To the extent the individual did not timely request confidentiality, the university may not withhold the marked cellular telephone number under section 552.117(a)(1).

In summary, the university must withhold the e-mail address you have marked, and the e-mail address we have marked, under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its disclosure. To the extent the individual whose information is at issue timely requested confidentiality under section 552.024, the university must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the university may withhold the cellular telephone number we have marked only if the cellular telephone service is not paid for by a governmental body. 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/>

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

[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 'Meredith L. Coffman', with a long horizontal flourish extending to the right.

Meredith L. Coffman  
Assistant Attorney General  
Open Records Division

MLC/dls

Ref: ID# 566435

Enc. Submitted documents

c: Requestor  
(w/o enclosures)