



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 14, 2015

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

OR2015-19033

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# 579024 (OGC# 162716).

The University of Texas at Dallas (the "university") received a request for all files for a named individual for a specified employment period. We understand the university will withhold information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, as well as social security numbers under section 552.147(b) of the Government Code.¹ You state the university will release some information. You claim the submitted information is excepted from disclosure under

¹Section 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). 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. *See id.* § 552.147(b).

sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The university must withhold the employee date of birth you have marked under section 552.102(a) of the Government Code.

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 laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* at 10-12. Section 411.083 of the Government Code deems confidential CHRI DPS maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for criminal justice purposes. *See id.* § 411.089(b)(1). Section 411.083 authorizes the DPS to disseminate CHRI to “noncriminal justice agencies authorized by . . . state statute to receive criminal history record information[.]” *Id.* § 411.083(b)(2). Section 411.094 of the Government Code provides in part:

(b) The Texas Higher Education Coordinating Board and each institution of higher education are entitled to obtain from the [DPS] criminal history record information maintained by the [DPS] that relates to a person who is an applicant for a security-sensitive position at the coordinating board or institution, as applicable.

²We assume that 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 that those records contain substantially different types of information than that submitted to this office.

(c) Criminal history record information obtained under Subsection (b) may be used only for the purpose of evaluating applicants for employment in security-sensitive positions.

(d) Criminal history record information received under Subsection (b) may not be released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

Id. § 411.094(b)-(d). You state the university is an institution of higher education. *Id.* § 411.094(a)(1) (defining “institution of higher education”); Educ. Code § 61.003(8) (defining “institution of higher education”). You indicate the university obtained the CHRI at issue for the purpose of evaluating the individual’s application for a security-sensitive position at the university. *See* Gov’t Code § 411.094(a)(2) (defining “security-sensitive position”). Thus, the university must withhold the CHRI you have marked under section 552.101 in conjunction with chapter 411 of the Government Code.

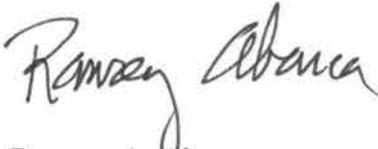
Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision No. 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). Upon review, we find the information you have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university must withhold the employee date of birth you have marked under section 552.102(a) of the Government Code. The university must withhold the CHRI you have marked under section 552.101 in conjunction with chapter 411 of the Government Code. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining submitted information must be released.

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 "Ramsey Abarca". The signature is written in a cursive style with a large, looped initial "R".

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 579024

Enc. Submitted documents

c: Requestor
(w/o enclosures)