



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 28, 2016

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

OR2016-06861

Dear Ms. Tynan:

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# 602976 (UT OGC# 166914 and 166956).

The University of Texas at San Antonio (the "university") received two requests from the same requestor for the personnel files of two named university police officers. You inform us you have released some information to the requestor. You state the university is withholding certain marked information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.¹ You also state the university is withholding certain marked information pursuant to sections 552.130(c) and 552.136(c) of the Government Code.² You further state the university is withholding certain marked

¹Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 of the Government Code 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* Gov't Code § 552.024(c).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). 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).

information pursuant to Open Records Decision No. 684 (2009).³ You claim portions of the submitted information are not subject to the Act. Additionally, you claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.⁴

The Act is applicable only to “public information.” Gov’t Code § 552.021. Section 552.002(a) of the Government Code 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

(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). Section 552.002(a-1) also provides the following:

Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer’s or employee’s official capacity, or a person or entity performing official business or a

³Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information without the necessity of requesting an attorney general decision.

⁴We 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.

governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

Id. § 552.002(a-1). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and, thus, is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You state the submitted information contains employee identification numbers of university employees. In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. You state the submitted computer identification numbers are unique, computer-generated numbers, created and assigned to university employees at the time they are hired. You also inform us, although these numbers are not used as computer log-on information, they are used by some employees for electronic time-keeping and are tied to employee identification badges within the security system to provide some employees access to secure areas. Based on your representations and our review, we agree the submitted computer identification numbers do not constitute public information for the purposes of section 552.002. Thus, the submitted computer identification numbers are not subject to the Act, and the university is not required to release them in response to the request for 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. This section 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. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). This office has also found personal financial information not relating to the financial transaction between an individual and a governmental body is excepted from disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (employee's designation of retirement beneficiary, choice of insurance carrier, election of optional coverages, direct deposit authorization, forms allowing employee to allocate pretax compensation to group insurance, health care or dependent care), 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history protected under common-law privacy). However, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision 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), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private).

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated the remaining information you have marked is highly intimate or embarrassing and not of legitimate public concern. Thus, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

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 dates of birth you have marked under section 552.102(a) of the Government Code.

As noted above, you state the university will redact certain marked information subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code. Section 552.117(a)(2) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a peace officer regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Upon our review, we determine the university must withhold the additional information we have marked under section 552.117(a)(2) of the Government Code.

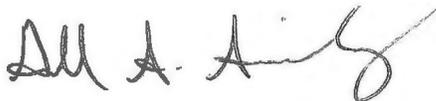
In summary, the computer identification numbers in the submitted information are not subject to the Act and need not be released to the requestor. The university must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the dates of birth you have marked under section 552.102(a) of the Government Code. The university must withhold the additional information we have marked under section 552.117(a)(2) of the Government Code. The remaining information must be released.

Finally, the university asks this office to issue a previous determination permitting it to withhold the dates of birth of current and former employees of the university when the dates of birth are held in an employment context under section 552.102(a) of the Government Code. *See* Gov't Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). We note a previous determination has been recently issued by this office to the university and refer you to Open Records Letter No. 2016-05776 (2016).

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

Ref: ID# 602976

Enc. Submitted documents

c: Requestor
(w/o enclosures)