



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 31, 2016

Ms. Idolina Garcia
Associate General Counsel
University of North Texas System
1155 Union Circle #310907
Denton, Texas 76203-5017

OR2016-12216

Dear Ms. Garcia:

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# 615183 (UNT PIR No. 003914).

The University of North Texas (the "university") received a request for the employee file of a named individual. You state the university will release some information. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative samples of information.¹

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses chapter 411 of the Government Code, which makes confidential criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990).

¹We 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.

The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See Gov’t Code* § 411.083. 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 CHRI] 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.

(c) [CHRI] obtained under Subsection (b) may be used only for the purpose of evaluating applicants for employment in security-sensitive positions.

(d) [CHRI] 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 [CHRI].

Id. § 411.094(b)-(d). We note 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 you have marked for the purpose of evaluating the employee’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 of the Government Code also 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. Additionally, this office has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally private. *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, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989)

(common-law privacy protects credit reports, financial statements, and other personal financial information). You assert the submitted information you have labeled as “representative sample 1” is confidential under common-law privacy. Upon review, we conclude the information at issue meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.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). Accordingly, the university must withhold the employee’s date of birth you have marked in the remaining information under section 552.102(a) of the Government Code.

You have marked some of the remaining information for redaction under section 552.117(a)(1) of the Government Code.³ We note there is additional information subject to section 552.117, which excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov’t Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. You indicate the employee at issue timely elected confidentiality under section 552.024. Therefore, the university must withhold the information you have marked and the additional information we have marked under section 552.117(a)(1) of the Government Code.

In summary, the university must withhold the CHRI you have marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code. The university must withhold the submitted information you have labeled as “representative

²As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

³Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee’s home address and telephone number, emergency contact information, social security number, and family member information excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee timely elected to withhold such information. *See* Gov’t Code §§ 552.024(a)-(c), .117(a)(1).

sample 1” under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the employee’s date of birth you have marked in the remaining information under section 552.102(a) of the Government Code. The university must withhold the information you have marked and the additional information we have marked under section 552.117(a)(1) of the Government Code. 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/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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/dls

Ref: ID# 615183

Enc. Submitted documents

c: Requestor
(w/o enclosures)