



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 26, 2015

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

OR2015-12829

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# 568923 (OGC # 161192).

The University of Texas at Austin (the "university") received a request for all e-mail communications between specified individuals at the university and the Central Intelligence Agency (the "CIA") and Federal Bureau of Investigation (the "FBI") during a specified period of time. You state the university will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You state the university will redact some information pursuant to sections 552.117, 552.136, 552.137 and 552.1175 of the Government Code.² You claim a portion of the submitted information

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²We note section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 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* Gov't Code § 552.136(c). If a

is excepted from disclosure under section 552.101 of the Government Code. You also state release of the submitted information may implicate the proprietary interests of the CIA, the FBI, and Rocket Media Group (“Rocket”). Accordingly, you notified these third parties of the request for information and of each party’s right to submit arguments to this office as to why the submitted information should not be released.³ *See* Gov’t Code §§ 552.304 (interested party may submit written comments regarding availability of requested information), .305; *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have received comments from the FBI. We have considered the submitted arguments and reviewed the submitted information.

Section 552.108 of the Government Code provides, in pertinent part, the following:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov’t Code § 552.108(b)(1). A governmental body claiming an exception to disclosure under section 552.108 must reasonably explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(b)(1) is intended to protect “information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State.” *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 at 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would

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 serves as a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. *See* ORD 684. Section 552.1175(f) of the Government Code authorizes a governmental body to redact under section 552.1175(b), without the necessity of requesting a decision from this office, the home addresses and telephone numbers, emergency contact information, dates of birth, social security number, and family member information of certain individuals who properly elect to keep this information confidential. *See* Gov’t Code § 552.1175(b), (f). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.1175(h). *See id.* § 552.1175(g), (h).

³As of the date of this ruling, we have not received comments from the CIA or Rocket.

unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143(1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs 531 at 2-3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The FBI asserts release of its information would interfere with current investigative interests. Upon review, we find the university may withhold some of the submitted information under section 552.108(b)(1) on behalf of the FBI. However, the FBI has failed to demonstrate how release of the remaining information would interfere with law enforcement.

The FBI asserts the remaining information pertaining to the FBI is excepted under section 552.101 of the Government Code in conjunction with the federal Freedom of Information Act (“FOIA”), chapter 552 of the United States Code.⁴ In Attorney General Opinion MW-95 (1979), this office determined FOIA does not apply to records held by an agency of the State of Texas or its political subdivisions. Furthermore, this office has stated in numerous opinions information in the possession of a governmental body of the State of Texas is not confidential or excepted from disclosure under the Act merely because the same information is or would be confidential under one of FOIA’s exemptions. *See* Open Records Decision Nos. 496 at 4 (1988), 124 at 1 (1976). However, if a federal agency shares its information with a Texas governmental agency, the Texas agency must withhold the information the federal agency determines to be confidential under federal law. *See* ORD 561 at 6-7; *accord United States v. Napper*, 887 F.2d 1528, 1530 (11th Cir. 1989) (finding documents FBI lent to city police department remained property of FBI and were subject to any restrictions on dissemination of FBI-placed documents). In this instance, the remaining information at issue consists of e-mails between the FBI and the university and is maintained by the university in connection with the university’s participation in the National Security Higher Education Advisory Board. Therefore, we conclude the remaining submitted e-mails were not simply shared with the university by the FBI, but rather are maintained by the university in relation to the official business of the university. *See* Gov’t Code § 552.002(a)(1). Consequently, the submitted e-mails may not be withheld under FOIA.

The FBI also generally asserts the submitted information is excepted under section 552.101 in conjunction with federal law. However, the FBI has not directed our attention to any federal law, nor are we aware of any federal law, that makes the remaining e-mails confidential. Therefore, none of the remaining information may be withheld under section 552.101 of the Government Code.

⁴Section 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.

The university claims a portion of the remaining submitted information is confidential under common-law privacy. 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 intimate and 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). 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 may withhold the information we have marked under section 552.108(b)(1) of the Government Code on behalf of the FBI. 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 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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 568923

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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