



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 14, 2017

Ms. Julie A. Masek  
Assistant General Counsel  
The Texas A&M University System  
301 Tarrow Street, 6<sup>th</sup> Floor  
College Station, Texas 77480-7896

OR2016-27024A

Dear Ms. Masek:

This office issued Open Records Letter No. 2016-27024 (2016) on December 6, 2016. Since that date, we have received new information that affects the facts on which this ruling was based. Consequently, this decision serves as the corrected ruling and is a substitute for the decision issued on December 6, 2016. *See generally* Gov't Code § 552.011 (providing that Office of the Attorney General may issue a decision to maintain uniformity in application, operation, and interpretation of the Public Information Act (the "Act")). This ruling was assigned ID# 649466 (OGC #W001641-091516).

Tarleton State University (the "university") received a request for a named employee's personnel file, including any records showing disciplinary actions or complaints about the employee's conduct. You state the university will redact information subject to section 552.117 of the Government Code pursuant to section 552.024 of the Government Code, and social security numbers pursuant to section 552.147(b) of the Government Code.<sup>1</sup> You claim some of the submitted information is excepted from disclosure under

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<sup>1</sup>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 552.147(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, 552.102, and 552.137 of the Government Code.<sup>2</sup> We have considered the exceptions you claim 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. This section encompasses information protected by other statutes, such as section 51.971 of the Education Code, which provides, in relevant part, the following:

(a) In this section:

(1) “Compliance program” means a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including matters of:

(A) ethics and standards of conduct;

(B) financial reporting;

(C) internal accounting controls; or

(D) auditing.

(2) “Institution of higher education” has the meaning assigned by Section 61.003.

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(c) The following are confidential:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, or participated in an investigation conducted under the compliance program; and

(2) information that directly or indirectly reveals the identity of an individual as a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the compliance program office of an institution of higher

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<sup>2</sup>Although you do not raise section 552.137 of the Government Code in your brief, we understand you to assert this exception based on your markings.

education if, after completing an investigation, the office determines the report to be unsubstantiated or without merit.

(d) Subsection (c) does not apply to information related to an individual who consents to disclosure of the information.

Educ. Code § 51.971(a), (c)-(d). We understand the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You state the submitted information pertains to complaints investigated by the university's Department of Risk Management and Compliance, which is part of the university's compliance program. Based on these representations, we find the information at issue relates to investigations conducted under the university's compliance program. *See id.* § 51.971(a)(1).

You state the information at issue relates to concluded compliance matters. You inform us the information in Exhibit B-1 pertains to completed compliance investigations that concluded in determinations that two of the complaints were unsubstantiated, and the remaining complaint was substantiated. You explain only a small group of individuals were involved in the investigations at issue, and release of the information at issue would directly or indirectly reveal the identities of those individuals who participated in the investigations, or the identity of the individual who was the subject of the unsubstantiated claims. You state none of these individuals have consented to release of their information. Upon review, we agree release of the information at issue would directly or indirectly identify individuals who participated in the investigations of the complaints and the identity of the individual who was the subject of the unsubstantiated complaints. *See id.* § 51.971(c)(1). Accordingly, the university must withhold Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.

We note the remaining information contains W-4 tax forms. Section 552.101 of the Government Code also encompasses information made confidential by federal law. Section 6103(a) of title 26 of the United States Code provides that tax return information is confidential. *See* 26 U.S.C. § 6103(a)(2), (b)(2)(A), (p)(8); *see also* Attorney General Op. MW-372 (1981). Employee W-4 tax forms are excepted from disclosure by section 6103(a). Open Records Decision No. 600 (1992). Accordingly, the university must withhold the submitted W-4 tax forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code.

You also claim some of the submitted information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) 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 information you have marked under section 552.102(a) of the Government Code.

Section 552.101 of the Government Code 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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

This office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is generally intimate or embarrassing. *See generally* Open Records Decision Nos. 600 at 9-10 (employee's withholding allowance certificate, 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), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy). Whether the public's interest in obtaining personal financial information is sufficient to justify its disclosure must be determined on a case-by-case basis. *See* ORD 373. Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, we conclude the university must withhold the information you have marked and we have marked for withholding under section 552.101 of the Government Code in conjunction with common-law privacy.

You state you will redact certain motor vehicle record information under section 552.130(c) of the Government Code.<sup>3</sup> Section 552.130 provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal

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<sup>3</sup>Section 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).

identification document issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a). Upon review, we find the remaining information contains additional information subject to section 552.130. Accordingly, the university must withhold the motor vehicle record information you have marked for redaction and the additional motor vehicle record information we have marked under section 552.130 of the Government Code.

You state you will redact the information you have marked under section 552.136(c) of the Government Code.<sup>4</sup> Section 552.136 provides, "Notwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." *Id.* § 552.136(b). Section 552.136(a) defines "access device" as "a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to . . . obtain money, goods, services, or another thing of value [or] initiate a transfer of funds other than a transfer originated solely by paper instrument." *Id.* § 552.136(a). Upon review, we find you have not demonstrated the information we have marked for release consists of access device numbers for purposes of section 552.136. Accordingly, the university may not withhold the information we have marked for release under section 552.136 of the Government Code. However, upon review, we find the university must withhold the remaining information you have marked for redaction, as well as all bank account numbers within the remaining information, under section 552.136 of the Government Code.

Section 552.137 of the Government Code excepts 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 address you have marked is not of the type specifically excluded by section 552.137(c). *See id.* § 552.137(c). Accordingly, the university must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release.

In summary, the university must withhold Exhibit B-1 under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The university must withhold the submitted W-4 tax forms under section 552.101 of the Government Code in conjunction with section 6103(a) of title 26 of the United States Code. The university must withhold the information you have marked under section 552.102(a) of the Government Code. The university must withhold the information you have marked and

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<sup>4</sup>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 governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

we have marked for withholding under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the motor vehicle record information you have marked for redaction and the additional motor vehicle record information we have marked under section 552.130 of the Government Code. Except for the information we have marked for release, the university must withhold the information you have marked for redaction, as well as all bank account numbers within the remaining information, under section 552.136 of the Government Code. The university must withhold the e-mail address you have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release. 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](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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/sb

Ref: ID# 649466

Enc. Submitted documents

c: Requestor  
(w/o enclosures)