



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 26, 2017

Ms. Julie A. Masek
Assistant General Counsel
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-07896

OR2017-08874

Dear Ms. Masek:

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# 654921 (Reference No. R000245-020217).

Texas A&M University (the "university") received a request for information pertaining to a specified case and employment records pertaining to three named individuals. You state the university does not have information responsive to a portion of the request.¹ You also state the city will redact information subject to section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code, certain information under sections 552.130(c) and 552.147(b) of the Government Code, and personal e-mail addresses under section 552.137 of the Government Code pursuant to Open Records Decision No. 684

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

(2009).² 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 the exceptions you claim and reviewed the submitted information.

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2017-05005 (2017). In that ruling, we determined (1) with the exception of the citation and basic information, the university may withhold the information you have marked under section 552.108(a)(1) of the Government Code; (2) the university must withhold the marked date of birth of a member of the public under section 552.101 of the Government Code in conjunction with common-law privacy; (3) the university must withhold the marked motor vehicle record information under section 552.130 of the Government Code; and (4) the remaining information must be released. We understand the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the university must continue to rely on Open Records Letter No. 2017-05005 as a previous determination and withhold or release the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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. A compilation of an individual’s criminal history is highly

²Section 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 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See id.* § 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 552.147(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 under the Act. *Id.* § 552.147. We note Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. *See Open Records Decision Nos. 542 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation or public employees), 432 at 2 (1984) (scope of public employee privacy is narrow).*

Upon review, we conclude some of the information at issue meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find the remaining information is either not highly intimate or embarrassing or is of legitimate public interest. Thus, none of this 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). Upon review, we find the university must withhold the dates of birth you marked under section 552.102(a) of the Government Code.

You state you will redact certain information pursuant to section 552.136 of the Government Code.³ Section 552.136 of the Government Code states "[n]otwithstanding any other provision of this chapter, 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; *see also id.* § 552.136(a) (defining "access device"). Upon review, we find most of the information you have marked under section 552.136 consists of access device numbers. However, the check numbers you have marked do not consist of access device numbers and may not be withheld under section 552.136 of the Government Code.

³Section 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).

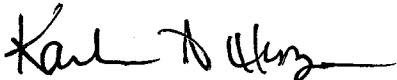
Accordingly, except for check numbers, which we have marked for release, the university must withhold the information you have marked under section 552.136 of the Government Code.

In summary, the university must continue to rely on Open Records Letter No. 2017-05005 as a previous determination and withhold or release the information at issue in accordance with that ruling. The university must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The university must withhold the dates of birth you marked under section 552.102(a) of the Government Code. Except for check numbers, which we have marked for release, the university must withhold the information you have marked under section 552.136 of the Government Code. 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/tdw

Ref: ID# 654921

Enc. Submitted documents

c: Requestor
(w/o enclosures)