



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 7, 2017

Mr. Fernando C. Gomez
Vice Chancellor and General Counsel
The Texas State University System
208 East 10th Street, Suite 600
Austin, Texas 78701-2407

OR2017-15142

Dear Mr. Gomez

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# 665194 (Texas State University File No. 17028.6).

Texas State University (the "university") received a request for certain information pertaining to a named individual.¹ You state the university will release some information to the requestor. You inform us the university will redact some information subject to section 552.117(a)(1) of the Government Code pursuant to section 552.024 of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.136, and 552.137 of the Government Code. Additionally, you state you notified an interested third party of the request for information and of her right to submit comments to this office. *See* Gov't Code § 552.304 (interested party may submit comments

¹You state, and provide documentation showing, the university sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²Section 552.024 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).

stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information, some of which constitutes a representative sample.³

Initially, although you assert a portion of the submitted information is not responsive to the instant request, we note this information pertains to the individual named in the request. Thus, we find the information you have marked is responsive to the request for information. Accordingly, we will consider your arguments against disclosure of the information at issue.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses the common-law physical safety exception. The Texas Supreme Court recognized, for the first time, a common-law physical safety exception to required disclosure. *Tex. Dep’t of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112, 118 (Tex. 2011). Pursuant to this common-law physical safety exception, “information may be withheld [from public release] if disclosure would create a substantial threat of physical harm.” *Id.* In applying this new standard, the court noted “deference must be afforded” law enforcement experts regarding the probability of harm, but further cautioned, “vague assertions of risk will not carry the day.” *Id.* at 119. Upon review, we find you have failed to demonstrate disclosure of the information at issue would create a substantial threat of physical harm to an individual. Therefore, the university may not withhold the information at issue under section 552.101 of the Government Code in conjunction with the common-law physical safety exception.

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. 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 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* ORD 545 (financial information pertaining to receipt of funds from governmental

³We 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 that those records contain substantially different types of information than that submitted to this office.

body or debts owed to governmental body not protected by common-law privacy). We note this office has found that names, telephone numbers, and addresses are not excepted from public disclosure under common-law privacy. *See* Open Records Decision No. 455 at 7 (1987). Furthermore, 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). Upon review, we find you have failed to demonstrate the information at issue is highly intimate or embarrassing and not of legitimate public concern. Therefore, the university may not withhold the information at issue under section 552.101 of the Government Code on that basis.

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." Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining "access device"). Accordingly, the university must withhold the information we have marked, as well as the information we have indicated to the extent this information consists of bank account numbers or routing numbers, under section 552.136 of the Government Code. However, upon review, we find you have failed to demonstrate the applicability of section 552.136 to the remaining information at issue. Therefore, the university may not withhold this information under section 552.136 of the Government Code.

You inform us the university will redact certain e-mail addresses pursuant to Open Records Decision No. 284 (2009).⁴ 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). Section 552.137 is not applicable to an institutional e-mail address, an internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail address we 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 we have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release. However, the remaining e-mail address you have marked consists of

⁴Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specific 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.

an e-mail address that is specifically excluded by section 552.137(c). *See id.* Consequently, the university may not withhold this information under section 552.137 of the Government Code.

In summary, the university must withhold the information we have marked, as well as the information we have indicated to the extent this information consists of bank account numbers or routing numbers, under section 552.136 of the Government Code. The university must withhold the e-mail address we 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, 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# 665194

Enc. Submitted documents

c: Requestor
(w/o enclosures)

1 Third Party
(w/o enclosures)