August 18, 2017

Ms. Cynthia Tynan
Senior Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West 7th Street
Austin, Texas 78701

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# 671665 (OGC # 175786).

The University of Texas Health Science Center at San Antonio (the “university”) received a request for a named employee’s personnel file. You state you will release some information. You also state you will redact information subject to section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code, subject to section 552.117(a)(2) of the Government Code in accordance with Open Records Decision No. 670 (2001), subject to section 552.130 of the Government Code, and in accordance with previous determination issued to the university in Open Records Letter No. 2016-18018 (2016).¹ You argue some of the submitted information is not subject to the Act. You also

¹Section 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). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). See id. § 552.024(c-1)-(c-2). Open Records Decision No. 670 authorizes all governmental bodies to withhold the current and former home addresses and telephone numbers, personal cellular telephone and pager numbers, social security numbers, and family member information of peace officers under section 552.117(a)(2) of the Government Code without necessity of requesting an attorney general decision. ORD 670 at 6. 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). Open Records Letter No. 2016-18018 authorizes the university to withhold employees’ dates of birth under section 552.102 of the Government Code without the necessity of requesting an attorney general’s decision.
Ms. Cynthia Tynan - Page 2

claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information.

Initially, the university asserts the University of Texas Electronic Identification Numbers ("UTEIDs") and associated barcodes contained in the submitted documents are not subject to the Act. The Act applies only to "public information." See Gov't Code § 552.021. Section 552.002(a) defines "public information" as:

[I]nformation that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body;

(2) for a governmental body and the governmental body:

(A) owns the information;

(B) has a right of access to the information; or

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). In Open Records Decision No. 581 (1990), this office determined certain computer information, such as source codes, documentation information, and other computer programming, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information made public under section 552.021 of the Government Code. The university informs our office that when combined with an individual's password, a UTEID serves as the required log-on protocol to access the computer mainframe, which is the university's centralized hub that runs all its high-level electronic functions. The university states the UTEIDs and barcodes are used solely to access the university's computer mainframe and they have no other significance other than their use as tools for the maintenance, manipulation, or protection of public information. Based on your representations and our review, we find the UTEIDs and barcodes contained in the submitted documents do not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the UTEIDs and associated barcodes are not subject to the Act and the university is not required to release them to the requestor.
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. 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.

(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 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). You inform us 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 information at issue pertains to a closed compliance investigation undertaken by the university police department’s internal affairs division and allegations against certain individuals were substantiated while others were unsubstantiated. You state the investigation was conducted in response to allegations against university employees and was initiated in order to assess and ensure compliance with all applicable laws, rules, regulations, and policies. Based on your representations, we find this information relates to an investigation conducted under the university’s compliance program. See id. § 51.971(a)(1).

You assert release of the information you have marked would directly or indirectly reveal the identities of those individuals who participated in the investigation or provided information. You inform us none of these individuals have consented to release of their information. Upon review, we agree release of the information you have marked would directly or indirectly identify individuals as complainants or as participants in the compliance program investigation. See id. § 51.971(c)(1). Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code.

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov’t Code § 552.108(b)(1); see also Open Records Decision No. 531 at 2 (1989). Section 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 Ft. Worth v. Cornyn, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). 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 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 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., Open Records Decision Nos. 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 information you have marked consists of serial numbers of firearms and other tactical police equipment. You argue release of the firearm serial numbers would interfere with law enforcement because the serial numbers would be used on illegal firearms or other tactical equipment used to commit crimes or falsely used in a missing weapons report. Additionally, you argue release of the remaining information would interfere with law enforcement and
compromise the ability of the university’s police department to secure the university’s campus and protect the safety and welfare of those on its campus. Based on your representations and our review, we agree release of the information you have marked would interfere with law enforcement. Accordingly, the university may withhold the information you have marked under section 552.108(b)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Id.* at 682. The court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Thus, the university must withhold the public citizen’s date of birth you have marked under section 552.101 of the Government Code.

In summary, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 51.971(c)(1) of the Education Code. The university may withhold the information you have marked under section 552.108(b)(1) of the Government Code. The university must withhold the public citizen’s date of birth you have marked under section 552.101 of the Government Code. The university must release the remaining information.

Finally, you ask this office to issue a previous determination permitting the university to withhold public citizens’ dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. Gov’t Code § 552.301(a) (allowing governmental body to withhold information subject to previous determination); Open Records Decision No. 673 (2001). After due consideration, we have decided to grant your request on this matter. Therefore, this letter ruling authorizes the university to withhold the dates of birth of public citizens under section 552.101 of the Government Code in conjunction with common-law privacy. We note common-law privacy is a personal right that lapses at an individual’s death. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); see also Open Records Decision Nos. 620 (1993), 272 (1981), 192 (1978). Therefore, this previous determination authorizes the university to withhold dates of birth of living individuals. This previous determination is not applicable to dates of birth belonging to deceased individuals. We also note a person or a person’s authorized representative has a special right of access under section 552.023 of the Government Code to information that is protected from public disclosure by laws intended to protect the person’s privacy interests. See Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Therefore, this previous determination is not applicable to dates of birth requested by a person or the authorized representative of a person whose date of birth is at issue. Furthermore, information filed with a court is not protected by common-law privacy. See Gov’t Code § 552.022(a)(17); *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (common-law privacy not applicable to court-filed document).
Accordingly, this previous determination is not applicable to dates of birth contained in court-filed documents. So long as the elements of law, fact, and circumstances do not change so as to no longer support the findings set forth above, the university need not ask for a decision from this office again with respect to this type of information. See ORD 673 at 7-8 (listing elements of second type of previous determination under Gov’t Code § 552.301(a)).

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,

Jahnna Ward
Attorney
Open Records Division

Ref: ID# 671665

Enc. Submitted documents
c: Requestor (w/o enclosures)