



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 25, 2017

Ms. Jennifer Burnett
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
210 West Seventh Street
Austin, Texas 78701

OR2017-24405

Dear Ms. Burnett:

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# 681353 (OGC# 176752).

The University of Texas Southwestern Medical Center (the "university") received two requests from the same requestor for certain clock-in information and all personnel information pertaining to multiple university employees during a defined time period. You state the university will release some information. You inform us you will redact certain information pursuant to 552.130(c) of the Government Code, as well as the previous determination issued to the university in Open Records Letter No. 2016-16872 (2016).¹ You assert some of the submitted information is not subject to the Act. Additionally, you claim some of the submitted information is excepted from disclosure under section 552.101 of the

¹Section 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. 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. 2016-16782 is a previous determination issued to the university authorizing it to withhold the dates of birth of living current and former employees of the university under section 552.102(a) of the Government Code without the necessity of requesting a decision from this office.

Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

Initially, you assert the University of Texas Electronic Identification Numbers (“UTEIDs”) 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.

Id. § 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. You inform 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. You indicate the UTEIDs 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

²We 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.

representations and our review, we find the UTEIDs contained in the responsive documents do not constitute public information under section 552.002 of the Government Code. Therefore, we conclude the UTEIDs 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.” Gov’t Code § 552.101. Section 552.101 of the Government Code encompasses the Family and Medical Leave Act (the “FMLA”). *See* 29 U.S.C. §§ 2601 *et seq.* Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states:

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees’ family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. . . . If the ADA, as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements . . . , except that:

- (1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
- (2) First aid and safety personnel may be informed (when appropriate) if the employee’s physical or medical condition might require emergency treatment; and
- (3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). Upon review, we find the information you have marked is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find none of the release provisions of the FMLA apply to this information. Accordingly, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the FMLA.

Section 552.101 of the Government Code also encompasses laws that make criminal history record information (“CHRI”) confidential. CHRI generated by the National Crime Information Center (the “NCIC”) or by the Texas Crime Information Center is confidential under federal and state law. CHRI means “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests,

detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI obtained from the NCIC network or other states. *See* 28 C.F.R. § 20.21. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 7 (1990). *See generally* Gov’t Code §§ 411.081-.1409. Section 411.083 of the Government Code deems confidential CHRI the Texas Department of Public Safety (“DPS”) maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or F of the Government Code. *See* Gov’t Code § 411.083(a). Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. We also note the term CHRI does not include driving record information. *See id.* § 411.082(2)(B). Upon review, we find you have not demonstrated the marked information constitutes confidential CHRI for the purposes of chapter 411. As such, the university may not withhold this information under section 552.101 in conjunction with section 411.083.

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 (1992) (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). 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* Open Records Decision No. 373 (1983). Upon review, we find the marked information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from public disclosure the current and former home addresses and telephone numbers, emergency contact information, social security number, and family member information of a peace officer, regardless of whether the peace officer made an election under section 552.024 or section 552.1175 of the Government Code to keep such information confidential. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. Accordingly, if the individual whose information is at issue is currently a licensed peace officer, except for the information we have marked for release, the university must withhold the information you have marked under section 552.117(a)(2) of the Government Code. However, upon review, we find you have failed to demonstrate the applicability of section 552.117(a)(2) to the information we have marked for release. Consequently, the university may not withhold this information under section 552.117(a)(2).

If the individual at issue is no longer a licensed peace officer, then the information at issue may be protected by section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *Id.* § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, except for the information we have marked for release, the university must withhold the information you have marked under section 552.117(a)(1) of the Government Code. However, upon review, we find you have failed to demonstrate the applicability of section 552.117(a)(1) to the information we have marked for release. Consequently, the university may not withhold this information under section 552.117(a)(1).

In summary, pursuant to section 552.002 of the Government Code, the UTEIDs are not subject to the Act and the university is not required to release them to the requestor. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with the FMLA. The university must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. If the individual whose information is at issue is currently a licensed peace officer, except for the information we have marked for release, the university must withhold the information you have marked under section 552.117(a)(2) of the Government Code. If the individual at issue is no longer a licensed peace officer, and if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code, except for the information we have marked for release, the university must withhold the information you have marked under section 552.117(a)(1) of the Government Code. 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# 681353

Enc. Submitted documents

c: Requestor
(w/o enclosures)